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June 4, 1975
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
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H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

THE MAGNAVOX COMPANY, etc., et al.,

Plaintiffs,

-v-

BALLY MANUFACTURING CORPORATION, etc., et al.,

Defendants.

CONSOLIDATED CIVIL ACTION NOS.
74 C 1030
74 C 2510

DEPOSITION of THOMAS A. BRIODY

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a Corporation, and SANDERS ASSOCIATES, INC., a Corporation, Plaintiffs, -v- BALLY MANUFACTURING CORPORATION, a Corporation, CHICAGO DYNAMIC INDUSTRIES, INC., a Corporation, EMPIRE DISTRIBUTING, INC., a Corporation, MIDWAY MFG. CO., a Corporation, SEEBURG INDUSTRIES, INC., a Corporation, THE SEEBURG CORPORATION OF DELAWARE, a Corporation, WILLIAMS ELECTRONICS, INC., a Corporation, and WORLD WIDE DISTRIBUTORS, INC., a Corporation, Defendants.	CONSOLIDATED CIVIL ACTION NOS. 74 C 1030 74 C 2510

The deposition of THOMAS A. BRIODY, called by the defendants for examination, pursuant to agreement and notice, and pursuant to the Rules of Civil Procedure for the District Courts of the United States, taken before James Dolan, a notary public within and for the County of Cook and State of Illinois, at Suite 1540, 135 South LaSalle Street, Chicago, Illinois 60603, on the 4th day of June, A. D. 1975, at 10:00 o'clock A.M.

PRESENT:

THEODORE W. ANDERSON, ESQ., and
JAMES T. WILLIAMS, ESQ.,
(Neuman, Williams, Anderson & Olson,
77 West Washington Street,
Chicago, Illinois 60602),

appeared on behalf of the Plaintiffs;

DONALD L. WELSH, ESQ., and
A. SIDNEY KATZ, ESQ.,
(Fitch, Even, Tabin & Leudeka,
135 South LaSalle Street,
Chicago, Illinois 60603),

appeared on behalf of Defendants
Bally Manufacturing Corporation,
Empire Distributing, Inc., and
Midway Manufacturing Company;

EDWARD C. THREEDY, ESQ.,
(Threedy & Threedy,
111 West Ashington Street,
Chicago, Illinois 60602),

appeared on behalf of the Defendant
Chicago Dynamic Industries, Inc.;

MELVIN M. GOLDENBERG, ESQ., and
WILLIAM T. RIFKIN, ESQ.,
(McDougall, Hersh & Scott,
135 South LaSalle Street,
Chicago, Illinois),

appeared on behalf of the Defendants
Seeburg Industries, Inc.,
The Seeburg Corporation of Delaware,
Williams Electronics, Inc., and
World Wide Distributors, Inc.

* * * * *

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MR. GOLDENBERG: Would you swear the witness.

(Witness sworn.)

MR. GOLDENBERG: Mr. Anderson, this deposition is being taken pursuant to notice, preceded by an agreement between counsel with respect to time and place. Do you agree with that?

MR. ANDERSON: We have no objection to the adequacy of the notice, and have produced Mr. Briody here pursuant to it.

MR. GOLDENBERG: I forget the day, but a couple of days ago I had made available to me copies of documents from the files of Sanders and Magnavox which were produced in response to certain interrogatories that we directed.

Can we have a stipulation that with respect to those documents that their authenticity would be admitted, and it would be stipulated that any document so produced was written on or about the date which appears on it and by the person who is the apparent signator, and received by the person to whom it was directed within a few days after it was prepared, subject to correction, of course, if the record warrants it.

MR. ANDERSON: Yes. I think that has to be taken on a document by document basis, obviously. I have no objection philosophically to your proposal, but some of

the documents aren't dated, some of them aren't signed.

MR. GOLDENBERG: I appreciate that. Where they are dated and where they are signed, I would ask that we have your agreement.

The alternative, of course, is to prove them in the more tedious way by calling the author or calling the recipient, and this perhaps could be avoided.

MR. ANDERSON: Well, I would think we can avoid that, but I think we have to do it on a document by document basis. There is no doubt that the documents we showed you came from the files of the Magnavox Company, and that I can stipulate to, and from Sanders, the two plaintiffs; but I think beyond that I will just have to reserve any specific objection until I see the document. I am not that familiar with all the documents. Philosophically, I think we can work it out.

MR. GOLDENBERG: All right.

MR. ANDERSON: I don't intend to put you to unnecessary proofs.

MR. GOLDENBERG: No. I understand that. The reason it perhaps comes of some moment here, if I understand the record as revealed by the documents, I am interested in making a record, if you will, with respect to the Magnavox-Sanders negotiations, which as I read the

documents, Mr. Briody did not participate in, and perhaps I will find that understanding is in error.

MR. ANDERSON: Well, I don't mind stating your understanding accords with mine and we both may find it's in error.

MR. GOLDENBERG: So, therefore, to have a record of those negotiations, I would propose to rely upon the documents, and this is the particular reason for seeking that kind of stipulation or understanding from you.

sic But as we get to the documents, you can decide what your position is on it.

MR. ANDERSON: I think that's best.

MR. GOLDENBERG: All right, sir.

THOMAS A. BRIODY,

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDENBERG:

Q Could you state your full name as you ordinarily use it in business and your residence address?

A Thomas A. Briody. I reside at 14322 River Wind Trail, Fort Wayne, Indiana, and the zip code is 46804.

I am employed by the Magnavox Company of Fort Wayne, Indiana, and the address is 1700 Magnavox Way

and the zip code is the same, 46804.

Q In what capacity are you employed by the Magnavox Company?

A I am Corporate Patent Counsel of Magnavox.

Q How long have you held that position?

A Since September of 1972.

Q Mr. Briody, could you, commencing with your graduation from high school,give us, as best you recall, your education at the college level and your employment experience?

A Yes. I graduated from Villanova College in 1952 with a B.E.E. degree.

Upon graduation, I entered the United States Marine Corps and was an officer in the United States Marine Corps from June, 1952 until, I believe it was October of 1954.

When I graduated from college at Villanova in June of 1952, I was also hired by General Electric Company, so when I was in the Marine Corps I was on a leave of absence from the General Electric Company.

When I left the Marine Corps in October of 1954, I rejoined the General Electric Company and became a test engineer. I was a test engineer for General Electric from that point in time until September of 1955, at which

time I entered the Patent Lawyer Training Program for General Electric in Washington, D. C., and also enrolled in law school at George Washington University of that city.

From September of 1955 until January or February of 1959, I attended law school, the evening division, at George Washington University, and also worked for General Electric in the daytime as a patent searcher and a patent trainee until I graduated from law school.

When I graduated from law school in January or February of 1959, I joined the General Electric Company as a patent attorney in Fort Wayne, Indiana.

Would you like me to abbreviate this to some extent?

Q No. If you could continue as you are doing --

A Okay.

From approximately February of 1959 until June of 1963, I worked as a patent attorney for General Electric in its component products group, patent division, in Fort Wayne, Indiana.

In June of 1963, I was promoted to the position of Department Patent Counsel for General Electric at its Audio Products Department in Decatur, Illinois.

From that point in time until 1967 -- I believe

it was June of 1967 -- I continued as a department patent counsel for General Electric in Decatur.

In June of 1967, I was promoted to a position of Licensing Counsel for the Consumer Electronics Division of General Electric, in Syracuse, New York.

From that point in time until January of 1970, I continued as Licensing Counsel for the Consumer Electronics Division of General Electric in Syracuse, but as I recall, during the last year or so I was assigned the additional duties of being patent counsel for the Visual Communication Products Department of General Electric at Syracuse.

In January of 1970, I left the employ of General Electric to join the IBM Corporation as a patent attorney in San Jose, California.

From January, 1970 until September of 1972, I continued working as a patent attorney for IBM in San Jose.

I believe, Mr. Goldenberg, that that brings me up to the point in time when I joined Magnavox as corporate patent counsel in September of 1972.

Q Would it be a correct understanding that in the years of your employment by General Electric you had the general duties and responsibilities of a patent

attorney to prepare patent applications, study infringement situations, licensing negotiations and perhaps with increasing responsibility as your years of service increased?

A Yes.

Q I am simply trying to shorten this. What were your duties as a patent attorney when you were with IBM in San Jose, generally, sir?

A I was primarily responsible for patent prosecution work and related activities such as invention disclosure processing for the Advanced Development Laboratory of IBM in San Jose, California.

Q Could you describe your duties as corporate patent counsel for Magnavox?

A I would say that my principal responsibilities at Magnavox are handling all phases of patent procurement and utilization or licensing on behalf of the Magnavox Company.

Q Do you supervise the activities of others?

A Yes.

Q Could you tell me how many others there are and how many of those might be patent attorneys or patent agents?

A At the present time, we have two patent attorneys

for whose work I am responsible.

Q And I would assume appropriate clerical and secretarial staffing?

A Yes.

Q To the extent that you know, could you describe the business of Magnavox?

A I would say that I am not an authority on referring to all of the businesses of Magnavox, because we are involved in many different businesses.

However, basically, we have three business type groups. One is our consumer electronics group; another is our government and industrial group; and the third group is involved primarily in musical instruments and home furnishings.

Q Could you tell me the products of the consumer electronics group?

A Well, I would say that we manufacture and sell black and white and color televisions, radios and high fidelity equipment. In addition, we also sell a product that relates to our television sets, which is called Odyssey.

Q And those are all products intended for the consumer market?

A The consumer electronics, to which I referred.

Q Yes.

A Yes.

Q To the extent that you know, could you tell me how Magnavox sells its products in the consumer electronics group?

MR. ANDERSON: Off the record.

(Discussion off the record.)

BY THE WITNESS:

A I'm not at all well versed in how they sell the products. I will tell you how I think we sell them.

BY MR. GOLDENBERG:

Q Your understanding, sir.

A We sell our consumer electronics products through dealers whom we select in different localities throughout the United States and whom we sell our merchandise through. We have a marketing organization that sells to dealers.

Q Would these be authorized or franchised dealers? Would either one of those phrases be an appropriate description?

You used the word "select."

A I would say that they have contracts with us for limited periods of time to handle our merchandise.

Q And sales to those dealers, to your knowledge,

are made directly by the Magnavox Company?

A In some instances. I would not want to say that we solely sell directly to dealers, because I think we may have some distributors, for example, outside the United States.

Q Does the consumer electronics group have any OEM business, and do you understand what I mean by that?

A Yes, I understand what you mean by that,but I don't feel as though I am qualified to answer the question.

Q Does the consumer electronics group make products for sale by some other company under the name of that other company, rather than under the Magnavox name?

MR. ANDERSON: Well, I object. Do you mean as of today or any time?

MR. GOLDENBERG: Well, does it now or has it since Mr. Briody assumed his position, to the extent that he has knowledge, of course.

BY THE WITNESS:

A I would not be aware of every instance of our marketing pursuits such as that, so I don't think I am qualified to answer the question.

BY MR. GOLDENBERG:

Q Did I understand from what you said that the

products of the consumer electronics group are sold in foreign countries, as well as the United States?

A Yes.

Q Do you know how they are sold?

A When you say, "Do you know," do you mean am I an authority?

Q No, sir.

A Or do you just want a comment?

Q I am simply attempting to get your knowledge.

A In some instances, I am aware of the fact that we sell our consumer electronics products directly overseas to distributors; and in some instances, I am aware of the fact that we sell our consumer electronics products directly to dealers; and in some instances, I think that we also sell our consumer electronics products directly to customers outside the United States.

Q You mean directly to consumer users or retailers?

A To retailers.

Q To retailers.

To the extent that you know, and to the extent and it might be appropriate to talk about it, because of some national security classification, could you tell me what the business of the government and industrial group is?

MR. ANDERSON: I think you can just call that "G & I," and that's what the company will refer to it as, generally.

MR. GOLDENBERG: Sounds like "Gastrointestinal"!

BY THE WITNESS:

A Well, the government and industrial group includes an organization that we have in Manlius that sells CATV hardware equipment.

BY MR. GOLDENBERG:

Q Manlius?

A Manlius, New York. It's a suburb of Syracuse.

Q I remember now.

A We also have a General Autronics organization that is located in a suburb of Philadelphia, which sells theft detection devices.

Q Could you describe those just a little bit?

A This would be a system whereby you automatically sense a substance that is on a garment or in a book which is being taken from a place in an unauthorized fashion, like from a supermarket or a library. You have a detection system that gives a signal.

Q Thank you. Could you continue with the G & I group?

A We have a Fort Wayne division of G & I that manufactures and sells sophisticated electronic equipment

to the government. That's their primary pursuit.

They have also in the past made skid detection devices which are sold for use in trucks and large vehicles.

On the west coast, at Torrance, California, Magnavox has its Magnavox Research Laboratories, which does some advanced engineering research for the whole company, which does government contract research and development and which also comes up with certain systems technology for sale or licensing outside of the United States.

Q Does that complete it, as far as you know?

A That's a general survey.

Q Thank you, sir.

Could you do the same with respect to the musical instruments group?

A I believe that this group is called the home furnishings and music group.

Q Home furnishings and music group. Thank you.

A This particular group of Magnavox includes a Selmer Division, which is located in Elkhart, Indiana. Selmer manufactures and sells band type instruments.

MR. ANDERSON: That's S-e-l-m-e-r?

THE WITNESS: S-e-l-m-e-r, yes.

BY THE WITNESS:

A (Continuing): We also have a Baker Furniture organization, which is part of this group, which is located in Michigan. Baker Furniture sells very high high-quality furniture. In addition to being high in quality, it also is high in price.

We also have a Selmer Division, which is located in Elkhart. Selmer primarily sells home furnishings for use in mobile homes --

BY MR. GOLDENBERG:

Q Excuse me just a moment. Is that the second Selmer?

A Oh, excuse me, I misstated "Selmer." This is our LaSalle-Deitch Division, in Elkhart. LaSalle-Deitch sells home furnishings and different types of equipment for use in mobile homes and recreational vehicles. LaSalle-Deitch also controls an organization called Instamatic. The Instamatic Division of LaSalle-Deitch sells gas absorption type refrigerators and specialized types of hardware for use in recreational vehicles and mobile homes.

I think that generally covers that group.

Q Thank you, sir. Inasmuch as you joined Magnavox in September of 1972, I would take it that you yourself

did not have a hand or any part of the negotiations between Magnavox and Sanders Associates resulting in the agreement entered into between those two companies in January of 1972, is that correct?

A That is correct.

MR. GOLDENBERG: Mr. Anderson, it's my desire to proceed as best I can in a chronological way, and to that end I would like now to mark and offer copies of documents from the files of Sanders and Magnavox which pertain to these negotiations, and they consist of various kinds of things, but mostly correspondence between the two companies.

I would like to do it that way, but I, of course, don't want Mr. Briody sitting here without any questions being put to him, and I welcome any suggestion that you might have. It may be that we can put those in after I have completed my questioning of Mr. Briody. There are some that do refer to him or were prepared by him or received by him. But I am loath to put those in as the first exhibits when, as I say, I would think it would be more orderly if they could go in chronologically.

MR. ANDERSON: Well, I certainly don't deny you the right to mark them, and if you would like them

chronologically numbered, why don't you just reserve the numbers that you know you will need, or number them now.

But I would object to any effort to offer them in evidence now. I think we will face that issue at some time, and we will see how you plan to show how they are relevant and so forth.

You have established this witness wasn't involved I gather, in what you plan to use the documents for, so they can be put in at any time. I don't see how --

MR. GOLDENBERG: Well, perhaps --

MR. ANDERSON: -- the sequence really matters.

These are all documents that we provided to you, I take it?

MR. GOLDENBERG: That is correct, sir.

I would like to have the reporter mark as Seeburg Briody Deposition Exhibit 1 a copy of a license agreement between the Magnavox Company and Sanders Associates, Inc., having an effective date of January 27, 1972.

(The said document was marked Seeburg Briody Deposition Exhibit 1 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, I hand you Seeburg Briody Deposition Exhibit 1 and ask you if you have ever seen that document before, it being understood that some portions of the document as made available to us have been deleted by blanking out. With that exception, have you seen that?

A I have seen other copies of this document.

Q Well, is that an accurate copy of the agreement between the two companies as of that date?

A It appears to be, Mr. Goldenberg, subject to the exceptions that you have referred to.

Q Mr. Briody, could you, with reference to pages 8 and 9, provide the information which has been deleted from those pages?

MR. ANDERSON: That can be answered yes or no.

THE WITNESS: Do you mean could I provide the information now?

MR. GOLDENBERG: Yes, sir, that will be my first question. Can you do that now, or any portion of it?

BY THE WITNESS:

A Yes, I could provide the information, or most portions of it, but heretofore we have been reluctant to make this information available.

MR. ANDERSON: I think you know that as well as every lawyer in this room, Mr. Goldenberg, and the information that has been deleted is primarily numbers and mostly numbers or dollars or pennies. The company considers it highly sensitive material that they would not like to have in the hands of competitors or the public, unless absolutely necessary, and I seriously question that those numbers are relevant to any issue in this lawsuit, or necessary for the completion of this deposition and, therefore, we would prefer to maintain the business confidence that we have maintained in the past with respect to those numbers.

MR. GOLDENBERG: Would that be your position even if we were to agree to a protective order with respect to that information?

MR. ANDERSON: Well, I'm always open to negotiations on a protective order. I think, for information of counsel, in the hope that that would be adequate to establish that the numbers are not relevant, we would be willing to enter into a protective order limiting those numbers for the present time to counsel, subject to release beyond that by court order.

MR. GOLDENBERG: It's not my intention to argue the point with you at this time, but I would like you to hear me for a moment as to why I think they are not only generally relevant, but relevant to the line of inquiry that I had in mind for today's examination of Mr. Briody.

I direct your attention to Article IV, paragraph (e), which begins at the bottom of page 6, and I will give you my paraphrase of it, but it provides that Sanders would have the right to approve terms and conditions of sublicense agreements to be negotiated by Magnavox under a certain condition, namely, that when the cash payments in any sublicense agreement are at least one-half of the royalty rates provided for in Articles V and VI, which royalty rates have been blanked out or deleted, Sanders would not have any right of approval.

We will get to this in a moment, but I believe the record will show that at a certain time Magnavox offered to sublicense a number of companies under a group of patents at a 5% royalty. It subsequently modified that offer in a number of instances and offered to sublicense those companies at a 5% royalty or a 4% royalty, if those companies were

willing to apply to the machines sold by them a certain sticker that would be in effect an advertisement for the Odyssey game.

T2

The correspondence will reveal that Sanders objected to that and apparently in response to that objection Magnavox withdrew that offer.

Therefore, I think we are entitled to know whether the 5% was at least half of the royalty specified in Articles V and VI and whether there was any need to check with Sanders, whether Sanders had any right to give or withhold approval with respect to that matter.

So I think it's relevant.

MR. ANDERSON: Well, I have heard you out. I don't necessarily agree with some of the asumptions or conclusions you have drawn, naturally.

MR. GOLDENBERG: I understand.

MR. ANDERSON: But I think my offer to you to let counsel have access to these numbers would satisfy what you say you need to do, namely, determine whether the numbers are such that it's more or less than a certain other number, and if it's in one category, I think it's irrelevant and we can drop it, and you will have satisfied yourself; if it's

in the other category, we can, I suppose, fight it out as to how to control access to that information by the public.

MR. GOLDENBERG: I don't think letting counsel know disposes of the matter, because I think we are entitled to have on the record what those numbers are, so that if it affects our position we are entitled to have the record show that.

By way of present compromise, in order that we might proceed, would you permit or advise Mr. Briody to answer the question as to whether either that 5% figure or the 4% figure which was offered to various sublicensees was at least half of the deleted numbers?

MR. ANDERSON: I think if you are specific as to the number at a particular page, that probably would be workable, but I think you recognize from your own knowledge of our documents that there is a conversion necessary, because one is in, I think, pennies per machine, and one is in terms of a percent of price.

If you want him to testify and to answer the question you have proposed by placing the necessary approximate price on the machine, I think

we can probably permit him to answer.

MR. GOLDENBERG: All right, let's try it that way and see if we can, for present purposes, have the matter end up there.

MR. ANDERSON: I appreciate that.

BY MR. GOLDENBERG:

Q Mr. Briody, the Odyssey game that you referred to, that is a game, as I understand it, which is manufactured by the Magnavox Company, is that correct?

A Yes.

Q And sold by that company?

A Yes.

Q Is that game manufactured under the license which has been identified here as -- if I may shorten this -- as Briody Deposition Exhibit 1?

A Yes.

Q And a royalty is paid on each such game by Magnavox to Sanders Associates?

A Is or has been paid.

Q Could you tell me if that royalty is a percentage or a flat royalty per unit, whether it be dollars or cents?

A It is a flat royalty per unit.

Q We will get into this in greater detail later,

but isn't it true that at various times Magnavox, acting under the rights given to it by the license agreement, has offered to sublicense the patents covered by the license agreement to various other companies?

THE WITNESS: Would you repeat that question, please?

MR. GOLDENBERG: Would you read it back, and if you don't understand it, I will rephrase it.

(Question read by the reporter.)

THE WITNESS: What do you mean by an offer, Mr. Goldenberg?

BY MR. GOLDENBERG:

Q Well, the transmission of a copy of a proposed sublicense agreement to a company or organization, accompanied by a letter saying in effect, "Here is a license agreement we are willing to enter into with your company, and would you please sign a copy and return it to us?"

A The reason I question the word "offer" in your question is that we have made general proposals to sublicense patents as a result of our rights under the Sanders-Magnavox agreement. These general proposals, if you will, have involved written -- on occasion -- written drafts of license agreements which we would assume if the

recipient agreed to the terms would sign and send back, and on that occasion I would need to have approval inside of Magnavox before we would accept the agreement, in other words, before both sides had signed the agreement, so I would say these were general proposals, not complete offers.

Q Let me understand this. You are Corporate Patent Counsel for Magnavox, are you not?

A Yes.

Q Have you ever met with representatives of any companies to discuss sublicenses under the -- as a shorthand way, can we call them the Sanders patents?

A Yes.

Q Did you have authority to meet with those people?

A Yes.

Q Did you have authority to send to them copies of proposed license agreements?

A Yes.

Q Did you ever tell any of those people that if they were to sign it that it would be necessary for you to go back to some other person in the Magnavox organization and obtain some kind of an approval?

A I don't recall specifically, but I think in

most instances, to the best of my recollection, I did.

Q So is it your position that you, on behalf of Magnavox, have never offered anyone a sublicense under the Sanders patents?

MR. ANDERSON: Well, I object. You mean in the legal sense of an offer and acceptance and a contract?

MR. GOLDENBERG: Well, Mr. Briody has given the word "offer" a peculiar meaning, and he has used the word "proposal" to describe what he has done. I want to pin down, to the extent that I can, the scope of his authority, his right to negotiate on behalf of Magnavox.

MR. ANDERSON: Well, I object to the question, because I think whether a given proposal constitutes an offer or not may be a legal question, and I think that's the reason -- if Mr. Briody seemed to fence at all, he was trying to be as specific as possible without passing judgment on whether a particular proposal was an offer under the contract law.

I think it's a proper objection that I am making.

MR. GOLDENBERG: Well, I don't want to get into, certainly, a legal argument as to what an offer is,

and the distinction between a proposal and that sort of thing at this time.

Let me then approach it this way:

BY MR. GOLDENBERG:

Q If I may use the word "proposal" to mean what you have described as to what you did, isn't it true that at various times you have made proposals to different companies and organizations to sublicense the Sanders patents at a royalty of 5% of the net selling price of the product involved?

THE WITNESS: Would you repeat that question, please?

(Question read by the reporter.)

BY THE WITNESS:

A Yes.

BY MR. GOLDENBERG:

Q Isn't it also true that at various times you have proposed to at least one company to sublicense the Sanders patents at a 5% royalty or, alternatively, a 4% royalty, and in both cases of net selling price of the product involved, alternatively at a 4% royalty if a label were attached to that company's product which would advertise the availability of the Odyssey game?

A Yes.

Q Well, performing whatever mental calculation you have to perform, could you tell me whether the 5% figure and the 4% figure or either one of them were at least half of the cash payments and royalties -- royalty rates set forth in Articles V and -- the royalty rates are at least one-half of those set forth in Articles V and VI of the Sanders agreement?

THE WITNESS: May I confer with counsel?

MR. GOLDENBERG: Oh, surely.

(Discussion off the record.)

THE WITNESS: Would you repeat the question, please?

(Question read by the reporter.)

MR. GOLDENBERG: Mr. Briody, I was changing the question a little bit as I went along there, and for the moment I would like you to confine your answer to the question of the royalty rates involved in these proposals.

MR. ANDERSON: I think that makes it easier.

THE WITNESS: Leaving out the reference to cash payments?

MR. GOLDENBERG: Leaving out the reference to cash payments.

MR. ANDERSON: There were some lump sum payments,

as you know from the language of the agreement Exhibit 1, and that's what complicates it.

THE WITNESS: If you would amend the question --

MR. GOLDENBERG: I would amend the question to confine it to royalty rates and, therefore, it would have reference to the last clause or so, starting at the bottom of the page.

BY THE WITNESS:

A Based on what I would have expected the 5 and 4% royalties to have been based upon, the answer is yes.

BY MR. GOLDENBERG:

Q All right, sir. Now, in these proposals -- and you understand, or we understand between us now what we mean by proposals to various companies to sublicense -- was it not also proposed that those companies would make cash payments for their sales prior to the execution of the license agreement proposed?

A Yes, I recall that it was.

Q And was it not proposed that those payments would be based on the royalty rates of either 5% or 4%?

A The cash payments, Mr. Goldenberg?

Q Yes, sir.

MR. ANDERSON: Would you read the question back for me, please?

(Question read by the reporter.)

THE WITNESS: You mean the cash payments for past liability?

MR. GOLDENBERG: Yes, sir.

BY THE WITNESS:

A I don't recall that the cash payments were to be based on either 5% or 4%. I seem to recall that the cash payments or past liability payments in the proposed licenses were to be made at a royalty rate of 5%, because it was not considered practical to put a label on machines that had already been sold.

BY MR. GOLDENBERG:

Q Perhaps you cannot answer this question, but with respect to the cash payments for past liability that would then be made by any company accepting the proposal made to it, would those cash payments be at least one-half of those provided for in Articles V and VI of the agreement?

MR. ANDERSON: I object to the question only because I think there are several agreements. If you have the Seeburg agreement in mind, it might be better to be specific. If the witness can answer to the generalized question, I am willing to let him.

MR. GOLDENBERG: I recognize that problem in the question, Mr. Anderson, because the proposals were made to a number of different companies of various sizes with varying past exposures.

THE WITNESS: Perhaps I could -- your question is unclear to me, Mr. Goldenberg, but I will make this comment: I don't think that I could answer the question because of the fact that no proposee, if you will, ever came forward and said -- with the possible exception of Seeburg -- and said, "This is what we think our past liability was or should be."

BY MR. GOLDENBERG:

Q As you best recall, could you state what the fact would be with respect to Seeburg?

MR. ANDERSON: Again I object, only to be sure the question is clear. When you say "the fact to be," you mean the fact of what Seeburg offered or what Magnavox was asking of Seeburg? I think the two are different.

MR. GOLDENBERG: Well, no. What we are talking about is the Magnavox proposal.

MR. ANDERSON: All right. Fine.

MR. GOLDENBERG: And the proposal there was to settle up the past, I think, as Mr. Briody has

testified, at the 5% royalty.

Now, therefore, I would ask with respect to the information he was given about Magnavox -- I'm sorry -- about Seeburg, its past exposure, would that be at least one-half of the cash payments provided for.

BY THE WITNESS:

A I don't think I could answer that question, Mr. Goldenberg, because it would be speculation on my part. As I recall, during our discussions with Seeburg, it was not exactly clear what the total exposure was, because you were speaking on behalf of a Spanish company which you wanted to be included in a prospective license agreement, but you didn't know very much information about this Spanish company or what their past liability might have been.

BY MR. GOLDENBERG:

Q Well, if we were to put aside the Spanish company and simply take as your premise the information you were provided with respect to the United States Seeburg companies and they include Williams Electronics, what would your answer be?

A I would say I don't really know.

MR. GOLDENBERG: Mr. Anderson, it leaves me with

a problem, because I think we have the right to information about those cash payments provided for in the Sanders agreement in order that we might make our own calculation.

MR. ANDERSON: Well, I guess there are two ways of approaching that. If Seeburg wants to tell us exactly what their production was, we would know; but right now, as I understand the witness' testimony, the only reason he can't answer your question is he doesn't know what revenue would have been generated by the lump sum payment that he was asking of or proposing to Seeburg.

MR. GOLDENBERG: Well, I think you are saying a little bit more than the witness said, but --

MR. ANDERSON: Well, I may be, and if I am, I apologize, but I then would suggest that you perhaps should pursue it farther to see just where the problem arises.

BY MR. GOLDENBERG:

Q Do you recall the information supplied to you, perhaps by me or somebody else, with respect to the number of video games sold by Seeburg?

A I seem to recall a number which you gave of 2,700 games.

Q That's the highest number you recall, sir?

A Yes.

Q Do you recall information supplied to you, perhaps by me or somebody else, as to the average selling price of those games?

A I seem to recall your mentioning $600 as a price.

Q You don't recall any higher figure than that?

A Not at this moment.

Q Well, let's take that for the moment -- and I'm not too sure of the value it's going to have, because I'm not sure those numbers are right -- but could you do the arithmetic of 2,700 times 600 times 5% and provide an answer on the basis of that information?

A My figures indicate that that would amount to $81,000.

Q Would that be half of the cash payment?

MR. ANDERSON: Or more than half?

BY MR. GOLDENBERG:

Q -- or more than half -- atleast half, to stay with the language of the Sanders agreement?

A I don't think so, Mr.Goldenberg.

Q Does Briody Deposition Exhibit 1 represent the entire agreement between Magnavox and Sanders with respect

to the patents or patent applications with which it is concerned?

A You have copies, Mr. Goldenberg, or I assume you have copies, of other agreements between Magnavox and Sanders, do you not?

Q Yes, sir, I believe I do. If you don't recall at this time --

A Well, I recall that there is another agreement between Sanders and Magnavox relating to filing patent applications outside of the United States.

MR. GOLDENBERG: I would like this document, being a letter from Mr. Seeger to Mr. Etlinger dated July 25, 1972, marked as Seeburg Briody Deposition Exhibit No. 2.

(Said document was marked Seeburg Briody Deposition Exhibit 2, for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q I show you Briody Deposition Exhibit 2, and I ask you if you have ever seen that document before?

A Yes, I have. A copy of this is in our original agreement file at Sanders.

Q Is that the other agreement with respect to foreign patents that you referred to?

A Yes, it is.

Q Are there any other agreements in writing between Magnavox and Sanders with respect to the patent applications licensed in the January 27, '72 agreement?

A Yes, there is a letter type of agreement between Magnavox and Sanders, which I think you have a copy of, also.

MR. GOLDENBERG: I ask the reporter to mark a letter agreement from Mr. Briody to Mr. Etlinger dated August 30, 1974 as Seeburg Briody Deposition Exhibit 3.

(Said document was marked Seeburg Briody Deposition Exhibit 3, for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q I hand you Briody Deposition Exhibit 3 and ask you if you have ever seen that document before?

A Yes.

Q Is that the letter agreement that you referred to just a moment ago?

A Yes.

Q Now, there are no other agreements in writing between the two companies with respect to the patent rights which were the subject of Briody Deposition Exhibit 1?

A None that are presently active, to my knowledge.

Q Are there any that are inactive?

A Yes, there was an agreement that was entered into between Magnavox and Sanders prior to this agreement that was entered into in January of 1972.

MR. ANDERSON: That's Exhibit 1, I believe?

MR. GOLDENBERG: That's Exhibit 1.

BY MR. GOLDENBERG:

Q To the extent that you recall, would you state generally what that prior agreement was?

A I'm not very familiar with the prior agreement at all, Mr. Goldenberg. I believe you have a copy of it.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 4 a letter dated September 3, 1970, from Mr. Louis Etlinger to Mr. Gerald Martin of Magnavox.

(Said document was marked Seeburg Briody Deposition Exhibit 4, for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, I hand you Briody Deposition Exhibit 4, and ask you if that's the prior agreement that you had in mind?

A No, Mr. Goldenberg, this is not the prior

agreement that I had in mind.

Q As best you can recall, can you tell me when that prior agreement was entered into?

MR. ANDERSON: Mr. Goldenberg, I think you have a copy of a prior agreement somewhere, in the nature of an option or a preliminary understanding that led up to Exhibit 1. It's a multi-page document.

THE WITNESS: I agree. I think it's a multi-page document of some sort and, as I recall, it was some form of an option.

Could we go off the record a moment?

MR. GOLDENBERG: Surely.

(Discussion off the record.)

MR. GOLDENBERG: Mr. Anderson has agreed to make available a copy of the prior option agreement about which Mr. Briody has testified, and it is agreed between us that that document, when made available, will be marked as Seeburg Briody Deposition Exhibit No. 5.

MR. ANDERSON: That's quite acceptable. We will get it as soon as we can.

MR. GOLDENBERG: Thank you.

BY MR. GOLDENBERG:

Q With the document Seeburg Briody Deposition Exhibit 5 to be produced, and perhaps excluding Briody Deposition Exhibit 4, do the remaining documents which have been marked as exhibits represent all of the written agreements between Sanders and Magnavox with respect to the patents and patent applications involved?

A I think so, Mr. Goldenberg.

Q Are there any other agreements between these two companies with respect to these patents which are not written?

A None of which I am aware.

Q Were there any agreements made between these two companies before January 27, 1972 with respect to these patents or applications which are not written?

A None of which I am aware.

Q Mr. Briody, when you did your calculation a moment ago with respect to the cash payment insofar as it concerned Seeburg, and provided an answer that it was not equal to one-half of the cash payments provided for in Article V of Exhibit 1, was that answer given with reference to Sections 1 and 2 of that Article V, or just one of those sections?

A That answer was given with respect to both

Sections 1 and 2.

Q Let me ask you the question: What would the answer be if you were to compare it to the cash payment or advance against future royalty provided for in Section 1 by itself?

MR. ANDERSON: Do you recall the question?

MR. GOLDENBERG: Do you recall the question? If you recall the question.

MR. ANDERSON: I think, Mr. Goldenberg, in answering the question he should more or less rephrase the question so the record is clear, the question is so far back.

You have no objection to that, do you?

THE WITNESS: Could you do that?

MR. GOLDENBERG: I can do that, sir.

MR. ANDERSON: I was going to let him do it, but that's fine.

BY MR. GOLDENBERG:

Q You recall, Mr. Briody, that I asked you, taking the number of 2,700 devices at an average selling price of $600, if you could calculate the amount of money that would be due or payable at 5%, and then asking you to do that, I would, perhaps forgetting all that has gone before, I would ask you, is that at least one-half of the

advance against future royalties provided for in Section 1 of Article V?

A Yes.

Q Is it at least one-half of the outright cash payment provided for in Section 2 of Article V?

A Yes.

Q I gather, therefore, it is not at least one-half of those two sums added together?

A Yes.

Q Returning to the matter of the proposals made to various companies and specifically to the proposal made at one time to various companies to license the Sanders patents at a 5% royalty, or a 4% royalty if a sticker was used, that was a proposal, was it not, to various companies?

A Yes.

Q That proposal was withdrawn, was it not?

A As I recall, it was.

T3 Q Could you tell me why?

MR. ANDERSON: I object to the question in that to some degree it asks for privileged information. I have no objection to your inquiring about communications regarding it, but there is a legal aspect to the conclusion.

MR. GOLDENBERG: Are there any aspects other than legal aspects?

MR. ANDERSON: Well, yes, I think there's a definite business aspect, as I understand the fact. I don't want to testify.

MR. GOLDENBERG: Do you have any objection if the witness testifies about the business aspects?

MR. ANDERSON: No. I think he has already done that, but I have no objection to pursuing that.

MR. GOLDENBERG: I'm not aware that he has, but perhaps I missed it.

BY MR. GOLDENBERG:

Q My question is: Why was the offer withdrawn, that proposal withdrawn?

MR. ANDERSON: Yes, and my recollection is that he has already said it was impractical, but --

MR. GOLDENBERG: I believe, sir, that that was in the context of the prior dispositions of the companies with whom he was negotiating, it was a practical --

MR. ANDERSON: You are correct, as to already sold machines. I beg your pardon.

BY THE WITNESS:

A I recall several reasons why it was withdrawn.

One that I recall was that it was not something that at least one of the prospective licensees wanted to do, so it was therefore considered an impediment from the standpoint of obtaining sublicensees under the patents.

I don't recall any other specific reason right now.

BY MR. GOLDENBERG:

Q Well, didn't Sanders object to it?

A Yes.

Q Wasn't that a reason?

A Not really, Mr. Goldenberg, because we considered that Sanders had entered into a license agreement with us and had given us the right to sublicense the patents. I suppose that was a consideration, but I don't think it was a reason.

Q Didn't Sanders have the right to approve the terms and conditions of sublicense agreements under certain specified conditions?

A Yes, but as I recall it, the right that they have under the agreement was interpreted by Magnavox as meaning only that they wanted to know what the considerations were going to be for sublicensing to make sure that Magnavox was not sublicensing their patents at a disadvantage to them.

MR. GOLDENBERG: I would like to have what is apparently an internal Sanders memorandum from which certain portions have been deleted, apparently prepared by Mr. Etlinger and dated March 11, 1974, marked as Seeburg Briody Deposition Exhibit 6.

(Said document was marked Seeburg Briody Deposition Exhibit 6 for identification, 6/4/75, J.D.)

MR. GOLDENBERG: Mr. Anderson, would I be correct in assuming that certain portions of this document were deleted before it was produced to me?

MR. ANDERSON: You are correct. As you know, Mr. Etlinger is a lawyer. The portions that we have deleted, in our opinion, quite clearly are within the attorney-client privilege. We have tried to be very careful in giving you the factual content of all these documents, as I'm sure you realize.

MR. GOLDENBERG: Yes, sir. Well, for the purpose of going ahead with Mr. Briody's deposition, I will not say anything about that now, but I have a problem that there are a number of documents that I can't tell whether something was deleted or not. It starts halfway down the page. I suppose you could consider it a minor complaint, but it would

have been helpful if the word "deleted" or some indication of a deletion had been provided on the document.

MR. ANDERSON: We can do that at some future date, if it will be helpful.

MR. GOLDENBERG: All right.

BY MR. GOLDENBERG:

Q Mr. Briody, do you recall a telephone conversation with Mr. Etlinger in March of 1974 in which the subject matter was this option to calculate royalties at 4% if the sticker were used?

A Yes, I recall at least one conversation.

Q Could you tell me what occurred in that conversation, including who said what?

A I am somewhat hazy on the subject, Mr. Goldenberg, because it was quite a few months ago, but as I recall it, I had sent a copy of a draft agreement with a prospective sublicensee to Mr. Etlinger, which included the royalty option from 5% to 4% if the label was used, and the main aspect of the discussion was whether or not the benefit of the 1% slide in the royalty down from 5% to 4% should be considered as a benefit to Magnavox, and our discussions related to how the royalty split and sublicensing between Sanders and Magnavox would be

altered because of the use of such a label in the sub-licensing agreements.

Q Could you tell me the Sanders position as stated to you by Mr. Etlinger during that or any other conversation, and I show you Exhibit 6, understanding quite well that you might not have seen it before, but that it could perhaps refresh your recollection?

A This does refresh my memory somewhat on the fact that I had a conversation with Mr. Etlinger about this.

As I recall, some prospective sublicensees thought the label was a good idea and some did not.

Q My question to you is: Could you state Sanders' position in the matter as stated by Mr. Etlinger to you?

A Could I confer with counsel?

MR. GOLDENBERG: Surely.

(Discussion off the record.)

MR. ANDERSON: Mr. Goldenberg, the question is the one I have already alluded to. Mr. Briody believes that certain aspects of their conversation were very definitely legal in nature and others were not. I am perfectly willing to have him relate to you the conversation as he best recalls it, except for any discussion of legal questions.

MR. GOLDENBERG: Mr. Anderson, I don't think I can accept that. These are two separate lawyers representing different clients engaged in a business relationship with each other. I don't see how any privilege attaches to any conversation that two lawyers might have with each other under those circumstances.

MR. ANDERSON: Well, I think this was on the eve of this litigation and the two lawyers were working together to try to see whether the litigation could be avoided and, if not, how it would be best moved forward. And I think it's either attorney-client privilege or work product or both.

I don't want to get into an academic argument on which it is, certainly, but --

MR. GOLDENBERG: I think the claim of right to withhold it for either reason is unwarranted. It may well be that the law would show me to be wrong, but I quite honestly am not familiar with any kind of privilege which would attach under the circumstances, whether it were on the eve of litigation or after litigation had commenced. These are two separate companies, each attorney counseling his own client, but they are engaged in some conversation

concerning how they are going to deal with third parties, and I think we are entitled to know what the conversation was.

MR. ANDERSON: But the parties are litigants here.

MR. GOLDENBERG: The third parties may become litigants, but I don't see how that changes the matter.

Now, I'm saying to you right now that you may have a case which supports this view and I certainly don't claim my knowledge of the subject is so comprehensive as to categorically say that you don't have some law on your side, but I have never encountered it before, I have never heard of it.

MR. KATZ: I would like to note, if I might, that this date -- this is what?

MR. GOLDENBERG: March, '74.

MR. KATZ: -- March, '74, was about a month before the litigation, not on the eve of litigation.

MR. ANDERSON: Well, I have long evenings, Mr. Katz, and to me a month before is on the eve of litigation.

MR. GOLDENBERG: I would also note that the litigation with Seeburg did not commence until the fall of 1974. And I will take this time to put into

the record a letter from Mr. Briody to Mr. Etlinger, dated February 27, 1974, as Briody Deposition Exhibit 7.

(Said document was marked Seeburg Briody Deposition Exhibit 7 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, is this the copy of a letter that you wrote to Mr. Etlinger?

A Yes, I believe it is.

Q Is this the letter which you referred to, perhaps inferentially, a moment ago when you said you sent Mr. Etlinger a copy of a proposed license agreement in which this 4% option was provided for?

A Yes.

Q Is there any other letter transmitting any such agreement?

A I don't think so.

Q Would it be a reasonable assumption that the phone conversation discussed in Briody Deposition Exhibit 6 was therefore about the proposed agreement with Seeburg Industries?

A I think so.

MR. GOLDENBERG: Mr. Anderson, I can certainly

say that here was a conversation between two companies having no corporate relationship that I am aware of, but simply a straightforward business arrangement involving negotiation with my client. There is no question it's the eve of litigation, because that didn't occur for a number of months later.

I think we are entitled to know all that was said.

MR. ANDERSON: Well, we disagree. I think attorney-client privilege and work product are applicable. I think the two companies clearly had a close and common interest and are entitled to claim attorney-client privilege with respect to discussions relating to dealings with your client, Seeburg, as a third party.

MR. GOLDENBERG: Well, I think we both have had essentially our say on the matter.

THE WITNESS: Could we go off the record for a minute?

MR. GOLDENBERG: Surely

(Discussion off the record.)

MR. GOLDENBERG: I would add one additional element. As we have pleaded in our answer and counter-claim, one of our defenses to this lawsuit

are possible misuses and violations of the antitrust laws of the United States, and if the topic we are presently inquiring about, namely, this offer and withdrawal of the 4% option and the circumstances that brought it about, amounted to a violation of the antitrust laws, I think any claim of privilege has to fail under these circumstances.

MR. ANDERSON: You have made a great many pyramided assumptions and I think you will agree that an antitrust count is almost Hornbook pleading in patent cases these days, unfortunately, and that by no means is sufficient to destroy the attorney-client privilege. You will have to make a substantial showing before you have any right to be heard on that contention.

MR. GOLDENBERG: Have no misunderstanding on this point: the antitrust pleadings in this case were not entered in these pleadings in any kind of Hornbook fashion. There was thought given to the matter and we believe they have merit.

But I say we do not accept the claim of privilege under any circumstance, and even if there be a claim of privilege, we believe it has to fail under these circumstances.

MR. ANDERSON: We can only agree to disagree.

MR. GOLDENBERG: Correct, sir.

BY MR. GOLDENBERG:

Q Well, Mr. Briody, in order that we might proceed-

THE WITNESS: I wonder if we could take a break?

MR. GOLDENBERG: Oh, surely.

Off the record.

(Discussion off the record.)

MR. GOLDENBERG: All right, we will resume at quarter of 2:00.

(Whereupon a recess was taken until 1:45, p.m. of this date.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, etc., et al., Plaintiffs, -v- BALLY MANUFACTURING CORPORATION, etc., et al., Defendants.	CONSOLIDATED CIVIL ACTION NOS. 74 C 1030 74 C 2510

Wednesday, June 4, 1975

1:45 o'clock, p.m.

The deposition of THOMAS A. BRIODY resumed pursuant to adjournment.

PRESENT:

MR. ANDERSON
MR. WILLIAMS

MR. WELSH
MR. KATZ
MR. THREEDY
MR. GOLDENBERG
MR. RIFKIN

MR. ANDERSON: We might go on the record for something other than the interrogation of Mr. Briody.

During the lunch hour, Jim Williams did make a brief legal search on the point raised in the morning session regarding the right to claim privilege on behalf of two parties having a common interest, and finds that there is apparently very strong support for the position that we have taken on behalf of Magnavox and Sanders in this litigation, and both McCormick on Evidence, Wigmore on Evidence and I believe a Ninth Circuit Case, support us. We will hand you copies right now in the hopes that that might expedite the way we proceed this afternoon.

MR. GOLDENBERG: Mr. Anderson, I don't believe it will, but it certainly might advance the matter if you give us the citations and if you have copies for us, we will be delighted to receive them.

MR. WILLIAMS: I would just as soon keep the copies, but I will give you the citations. Continental Oil v. United States, 330 F. 2d 347 (1964); Wigmore, Volume 8, Section 2312, and it's pages 603 through 609 --

MR. GOLDENBERG: Is there any particular edition of Wigmore?

MR. WILLIAMS: The 1961 edition.

-- and McCormick, 1972 edition, pages 189

through 191, or the 1954 edition of McCormick, pages 192 and 193.

MR. GOLDENBERG: Thank you.

MR. ANDERSON: For the record, also, we did check during the lunch hour and have now found that the option document referred to this morning was in the group that we believe you saw but didn't copy, and we have now provided you with a copy of that document.

MR. GOLDENBERG: Thank you, Mr. Anderson, and I will now give that copy to the reporter to be marked as Seeburg Briody Deposition Exhibit No. 5, which was our understanding.

(Said document was marked Seeburg Briody Deposition Exhibit 5, for identification, 6/4/75, J.D.)

THOMAS A. BRIODY,

called as a witness by the defendants, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR.GOLDENBERG:

Q Mr. Briody, I hand you Deposition Exhibit 5, and I ask you, is that the option agreement you referred to in your testimony of this morning?

A Yes, I believe it is the other agreement.

Q Thank you, sir.

I forgot to ask you this this morning, Mr. Briody: To whom do you report in the Magnavox Company?

A I report to Mr. Sam Rozel, who is the Vice President and general counsel of Magnavox.

Q I would now like to return to the matter we were inquiring about just before noon and specifically the telephone conversation or conversations you had with Mr. Etlinger about the Magnavox proposal to offer prospective sublicensees the 4% royalty option, and I ask you if in any of those conversations, and specifically in the one referred to in the Etlinger memorandum, Deposition Exhibit 6, was litigation discussed?

MR. ANDERSON: Well, I think I will object. We have stated our position on the attorney-client privilege aspect of the case. I recognize that you are attempting to recognize that objection, I believe, and skirt around the issue so that you can pursue your course of conduct or inquiry, but this is an attorney-to-attorney communication regarding a matter which we consider to be privileged, and we have found authority that supports us, and I think we will stand on that claim of privilege as to the

communication between Mr. Etlinger and Mr. Briody on this subject.

MR. GOLDENBERG: Well, Mr. Anderson, that seems to me to be a kind of bootstrapping, and the claim of privilege is made, if I understood it correctly, on the ground that litigation was contemplated --

MR. ANDERSON: No, that's not true.

MR. GOLDENBERG: Then what --

MR. ANDERSON: I am claiming a work product right on the ground that litigation was contemplated, and I am claiming attorney-client privilege without regard to contemplated litigation, but it was an attorney-to-attorney communication regarding a legal matter in which the parties are entitled to an attorney-client privilege, according to our authorities.

MR. GOLDENBERG: All right, sir.

BY MR. GOLDENBERG:

Q Mr. Briody, would you relate to me the entire conversations that you had with Mr. Etlinger about this (sic) 4% option proposal made to prospective licensees by Magnavox, or by you on behalf of Magnavox?

MR. ANDERSON: Mr. Goldenberg, if we can expedite this by agreement, I will permit Mr. Briody

to state what facts were transmitted between the parties, if we can agree that you will not inquire without clearing this attorney-client privilege, with regard to any opinions, legal judgments, requests for opinions or legal judgments, in the classic attorney-client communication situation.

If we can't agree on that, I will instruct him not to answer.

T4 MR. GOLDENBERG: That's what I was seeking to determine, was whether or not you are prepared to --

MR. ANDERSON: If we cannot reach that agreement.

MR. GOLDENBERG: We cannot agree.

MR. ANDERSON: I will instruct him not to answer.

BY MR. GOLDENBERG:

Q Do you accept that instruction, Mr. Briody?

A Yes.

Q Then would you tell me about that conversation, or those conversations, excluding those things which you believe to come within the scope of the objection and instruction received from Mr. Anderson -- that come without that scope, and those things for which no claim of privilege or work product is made?

You understand, Mr. Anderson, that I reserve my right to pursue that matter?

MR. ANDERSON: Yes, and that's acceptable provided only that you also agree that as to what Mr. Briody says, he is waiving any possible claim to privilege as to what he says, but not as to the other parts of that conversation by virtue of the answers that he gives here today.

In other words, I would not want you to go to court and say Mr. Briody gave part of the conversation and that constitutes a waiver of the entire conversation.

MR. GOLDENBERG: I understand that, sir.

MR. ANDERSON: And I guess I will have to extract the same agreement from counsel for the other parties, Mr. Welsh and Mr. Threedy, and if they won't accept it, then I think I will have to maintain my position or they will have to leave the room, one of the two.

MR. GOLDENBERG: I'm certainly not going to ask them to leave the room.

MR. WELSH: And I am not prepared to accept it.

I would like to have you read back -- could you read Mr. Anderson's statement?

MR. ANDERSON: And you probably ought to read Mr. Goldenberg's statement, too.

(Record read as requested.)

MR. THREEDY: On the record, on behalf of the defendant CDI, with the understanding that we do not find merit in Mr. Anderson's position, we would accept the condition imposed upon the witness at this time to answer the specific question propounded to him.

MR. ANDERSON: All right, fine.

Well, it will be a series of questions.

MR. THREEDY: Or series of questions. We are waiting for the interrogation, so we have no way of knowing.

MR. WELSH: I will agree that Mr. Briody or you on behalf of him do not waive, by testifying with respect to part of the testimony -- I mean part of the conversation, I will agree that you do not waive your right to argue that the other part is privileged, but I don't want to restrict my scope of argument with respect to whether he has made any waiver or not.

MR. ANDERSON: Well, I'm afraid that leaves me in a dilemma that I can't accept. Having raised the issue, you are now putting me on notice that you will -- or that you certainly reserve the right to claim a waiver, and under that condition I will

instruct the witness not to answer any questions regarding these conversations on this subject that have been raised here.

I just don't see how -- I'm sorry, Mr. Goldenberg, I want to cooperate -- but I don't see how I can agree to the condition Mr. Welsh is placing upon us to waive other matters by permitting interrogation that I would like to let you go forward with.

MR. GOLDENBERG: Well, you understand, sir, that it poses a problem for me, but I respect Mr. Welsh's position in the matter, as we all do.

I will go ahead, as I say, reserve our rights to pursue the entire subject now, and say, as we have said before, that we do not agree with the legal soundness of the position you have taken in the matter.

MR. WELSH: I might say also that I think the position of a claim of privilege here is completely untenable.

MR. ANDERSON: Would you like to read our material on that, the material that Mr. Williams has?

MR. WELSH: I certainly expect to.

MR. ANDERSON: Do you want to take the time to

do that now?

MR. WELSH: If you want to take the time now.

MR. ANDERSON: It's not my decision, Mr. Welsh. I will offer several alternatives.

If you would like, we can all agree that you and Mr. Katz will leave the room --

MR. WELSH: I don't agree to that.

MR. ANDERSON: -- and we will put this portion of the deposition under seal and we can fight out that issue later. That's one approach.

We will be happy to give you our authorities now, which I think are rather clear and convincing, if that will help. I suspect, though, that you are not going to change your mind based on the authorities that we give you now, but I am willing to do it and take whatever time is necessary.

Otherwise, I think we might as well let this matter of the conversation hang in abeyance pending resolution of the dispute, and go on to other things.

MR. GOLDENBERG: Let's go ahead. I think that's the only present practical solution.

MR. WELSH: I might say this: If Mr. Briody is willing to testify with respect to certain

matters which he does not consider to be subject to privilege, I don't see what difference it makes if he has already made that conclusion.

If you are going to change your mind later and say that those matters which he did testify to as not being subject to the privilege are privileged, why, then I can see your reason for not instructing him to go forward.

MR. ANDERSON: Well, your presumption is that Mr. Briody's conclusion in that matter is conclusive, and that's not the case.

MR. WELSH: You are here as his counsel to advise him whether it is privileged or not.

MR. ANDERSON: Well, whether it is or not, you can contend there is a waiver as to something I don't even know about. I think we are entitled to protect the communication in its entirety, if necessary. I would love to promote the expeditious completion of this matter by letting him tell the factual discussion that occurred other than any possible legal opinions and requests for legal opinions, but you are not willing to do that, so I see no alternative.

There is at least one recent waiver case

that, to tell you the truth, scares me. It puts you in a real dilemma when you start to disclose any portion of an attorney-client communication.

MR. WELSH: Mr. Anderson, I wonder if that might apply to the portion of this communication or the memorandum of Mr. Etlinger that deals with the communication.

You have already disclosed his memorandum of a portion of the conversation had with Mr. Briody while deleting other portions.

MR. ANDERSON: You may take that position. I don't know.

MR. WELSH: It seems to me that your position would be that it's applicable to the material disclosed in that exhibit the same as with respect to Mr. Briody's oral testimony.

MR. ANDERSON: Except that I know what we produced in the document and I don't know what Mr. Briody might say or how far he might go or, in fact, exactly what he will say, and I am willing to cooperate, but I am not willing to put the right that I think we have in jeopardy.

MR. GOLDENBERG: Well, I would take it there is no contention that Mr. Etlinger was a client of Mr.

Briody?

MR. ANDERSON: No. Mr. Etlinger was an attorney, an attorney for Sanders; Mr. Briody was an attorney, an attorney for the Magnavox Company. The Ninth Circuit case that Mr. Williams gave you, or the citation of it, as I understand it, is precisely on all fours with that fact situation.

MR. GOLDENBERG: Well, don't you think it would be helpful, sir, if you would at least permit an answer to the question as to whether or not litigation was discussed?

MR. ANDERSON: I would not object to the witness answering that question, but for the fact that that's just a threshhold question, obviously, and I thought we had a workable solution, but --

BY MR. GOLDENBERG:

Q To continue, then, Mr. Briody, it is your testimony, is it not, that there did come a time with respect to certain prospective licensees that the 4% option offer was withdrawn?

A Yes.

Q And I believe you also testified one reason for that was that some of the prospective licensees objected, is that correct?

A That's correct.

Q Were there any other reasons -- and let me give you my recollection that I think you also testified that Sanders' unwillingness was a consideration, I think you termed it, rather than a reason --

A I don't recall that Sanders' comments regarding the prospective sublicensing agreement were considered by me as a reason.

One other reason was that management, upper management of Magnavox, indicated to me that they were less impressed with the value of such a label to Magnavox.

Q Less impressed than whom?

A Less impressed with the value than they were at the time that the proposed license agreements were sent out with the optional label in them.

Q I see, sir. Could you identify that upper management who indicated that to you?

A Alfred diScipio, spelled A-l-f-r-e-d, d-i S-c-i-p-i-o.

Q What is his position in the Magnavox organization?

A He is a senior vice president in charge of the consumer electronics group of Magnavox.

Q Is he still employed by Magnavox?

A Yes.

Q In that capacity?

A Yes.

Q Was he in that capacity at the time he indicated this view to you?

A Yes.

Q Was there anybody else?

A I don't recall.

Q Was there any other reason?

A I don't recall any other reasons that were significant in my mind at the time.

Q Could you tell me the companies with whom you were negotiating as prospective licensees who objected to the 4% label option?

A I don't recall clearly, but I think one of them was Atari.

Q Was this objection communicated to you orally or in writing?

A I believe it was indicated to me orally.

Q Would you have recorded this in a memorandum of a meeting or a telephone conversation or something like that?

A I don't recall.

Q Who communicated this to you on behalf of Atari?

A I don't recall.

Q Did any of the prospective licensees indicate to you that they had no objection to the 4% label option, assuming an agreement was to be otherwise signed?

MR. ANDERSON: Well, I object only that I don't know what you mean by "assuming." Who is assuming?

MR. GOLDENBERG: In the question, the point I was attempting to cover, Mr. Anderson, is that one or more of the prospective licensees might have been objecting to some other term or condition of the proposed license, the royalty rate or something else, but would have no objection to that feature.

MR. ANDERSON: Specifically indicated no objection, or just didn't raise that question, just so I understand?

MR. GOLDENBERG: Well, first specifically indicated no objection to that feature.

BY THE WITNESS:

A As I recall it, your client Seeburg indicated that they had no objection to that.

BY MR. GOLDENBERG:

Q Who communicated Atari's objection to you?

A I don't recall. It would involve speculation on my part as to which person was involved.

Q Do you recall what the basis of their objection was?

A No.

Q Would it have been a Mr. Bushnell or Mr. Riddell who would have communicated the Atari objection to you?

MR. ANDERSON: Well, I object to the question in that it's speculative.

Are you asking if naming them refreshes his recollection?

MR. GOLDENBERG: Yes.

BY MR. GOLDENBERG:

Q If I suggest either one or both of those names to you, does that help your recollection in that respect?

A Not really, Mr. Goldenberg, because I can remember several meetings involving -- sort of vaguely -- involving lawyers who were representing Atari and Atari's management, and I'm not sure, you know, which one might have made this comment.

Q Were there any other occasions during the period that you were negotiating on behalf of Magnavox with various companies or organizations with respect to sublicenses under the Sanders patents that you consulted or communicated in any way with Sanders, and I would guess Mr. Etlinger of Sanders?

THE WITNESS: Would you repeat that question, please?

(Question read by the reporter.)

BY MR. GOLDENBERG:

Q I would like to add onto that, about any terms or conditions of proposed sublicense agreements?

A Yes.

Q Could you tell me what those were, sir?

A I don't recall any specific conversations, Mr. Goldenberg, but from time to time Mr. Etlinger would call me to inquire about what was going on, you know, as far as sublicensing was concerned.

Q And you would give him a report on the current status?

A In a general sense, yes.

Q Did you ever discuss with him whether or not Sanders Associates would approve or disapprove one term or condition or another in any of these proposed license agreements beyond the 4% label option that we have already discussed?

A I don't understand your question, Mr. Goldenberg.

Q Well, I'm trying to find out, sir, whether you discussed with Mr. Etlinger, on behalf of Sanders, any of the proposed terms and conditions that you were making

on behalf of Magnavox to prospective licensees?

A I can remember having, in a general sense, conversations with him that would update him regarding our sublicensing program.

Q Did you seek any kind of approval or concurrence from him on behalf of Sanders with respect to any particular term or condition of the proposed sublicense agreement?

A Well, we have already discussed the letter that I wrote to Mr. Etlinger asking him for comments about a prospective agreement with Seeburg. That's one of the exhibits.

Q I think it's Deposition Exhibit 7, is that correct?

A Yes.

Q Did you get his comments?

A I think I testified this morning, Mr. Goldenberg, that I thought that he probably made a telephone call that involved comments concerning this letter.

Q Now, the only topic of a telephone call or calls that we discussed this morning involved this label option provision. Was there anything else?

A You mean did he make any other comments?

Q Yes, sir.

A I don't recall that he made any other comments. He --

Q Now, was there -- I'm sorry, go ahead.

A He might have said that it's a fine license agreement, but that's speculation. I don't recall that.

MR. ANDERSON: Maybe even wishful thinking!

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 8 a letter from Mr. Briody to me dated May 22, 1973.

(Said document was marked Seeburg Briody Deposition Exhibit 8 for identification, 6/4/75, J.D.)

MR. ANDERSON: This is a copy of the original from your files?

MR. GOLDENBERG: Yes.

MR. ANDERSON: And not from our files?

MR. GOLDENBERG: Yes. I believe it was in the files made available to me, but I didn't copy it.

MR. ANDERSON: Thank you. I trust it was.

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Briody Deposition Exhibit 8, and I ask you if that is a letter that you wrote to me on the date indicated?

A It appears to be a copy of that letter.

Q Isn't it correct that the letter is an offer to license to Magnetic Corporation of America on a non-exclusive basis three patents at a royalty of 7%, together with certain other broadly stated conditions?

MR. ANDERSON: Mr. Goldenberg, can we agree to have the question "propose to license," or do you insist on "offer"?

MR. GOLDENBERG: I'm willing to accept the word "proposal."

MR. ANDERSON: Thank you.

BY THE WITNESS:

A I would say this was a proposal.

MR. GOLDENBERG: I would like to have the reporter mark as Seeburg Briody Deposition Exhibit 9 a copy of a letter from Mr. Briody to me dated July 20, 1973.

(Said document was marked Seeburg Briody Deposition Exhibit 9 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Deposition Exhibit 9 and I ask you if that is a copy of a letter that you wrote to me on about that date?

A Yes, I think this is a copy of that letter.

It was a follow-up letter.

Q Doesn't this letter make reference to what is then apparently a proposal to reduce the royalty rate from 7% to 6%?

I'm not saying that proposal was made in that letter. It may have been made in some previous communication that we had had.

A Yes. This refers to a proposed running royalty of 6% which I believe was based on an earlier meeting.

Q That's my recollection, too, sir. So that the royalty rate in the original proposal was 7% and is now reduced to 6%; that's correct, isn't it?

A Well, Mr. Goldenberg, as I recall, it was not reduced by this letter; it was reduced at a meeting that I had with you in your office.

Q That's my understanding, too, sir, and the purpose of the letter is simply to fix the time span of this reduction in the proposed rate. I do not contend that the reduction occurred by action of the letter. It had occurred previously as the result of a meeting that I believe you and I had.

Did you consult with Sanders when you reduced the royalty rate, or proposed to reduce the royalty rate, from 7% to 6%?

A I don't recall, Mr. Goldenberg.

Q It is your best recollection now that you simply do not recall whether you did or not? I want your best memory on this, and I would ask you, if you could, to take a moment to give me your best recollection.

A I don't recall.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 10 a copy of a letter from you, Mr. Briody, to me, dated November 12, 1973.

(Said document was marked Seeburg Briody Deposition Exhibit 10 for identification, 6/4/75, J.D.)

MR. ANDERSON: This is also a copy of a letter from your file, I believe, Mr. Goldenberg, not one that we produced?

MR. GOLDENBERG: I do not recall at this moment -- this copy is from our file, yes.

MR. ANDERSON: It shows your "Received" stamp?

MR. GOLDENBERG: Yes. No doubt you produced a copy of this letter to me, but not the thing from which this is a copy.

MR. ANDERSON: Right.

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Deposition Exhibit 10, and I ask you if that is not a copy of a letter that you wrote to me on the date indicated?

A Yes, I think it's a copy of a letter I wrote to you on or about that date.

Q And in that letter, the running royalty rate with respect to the three patents identified is now reduced to 5%, is it not?

A Yes.

Q Prior to making a proposal reducing the running royalty rate to 5%, did you consult about that with Sanders Associates?

A I don't specifically recall, Mr. Goldenberg. I believe I already mentioned that on occasion Mr. Etlinger would call to find out what was going on. He may have called on or about this time and was told what, you know, the royalty rate was then at, and negotiations and discussions that we were then having with you on behalf of your client.

Q If you didn't consult with him, or don't recollect that you consulted with him, I take it that you also have no recollection that you sought his approval?

A Definitely true.

Q If you consulted with Sanders Associates with respect to the reduction to 6%, to 5%, would those discussions have been with Mr. Etlinger on behalf of Sanders, if you had such discussions?

A I believe so.

Q Have you ever discussed the sublicensing efforts of Magnavox with anybody else in the Sanders organization other than Mr. Etlinger?

A Yes.

Q Could you tell me who?

A I believe the gentleman's name was Mr. Chisom.

MR. ANDERSON: C-h-i-s-o-m?

THE WITNESS: The name should be correctly spelled in one of your exhibits.

MR. GOLDENBERG: Yes.

THE WITNESS: Exhibit No. 6.

MR. ANDERSON: Excuse me, I didn't mean to reach into your stack and take it.

MR. GOLDENBERG: No, no, quite all right. I try to segregate exhibits from other things so we don't have that problem.

BY MR. GOLDENBERG:

Q Do you know what position Mr. Chisom holds in the Sanders organization?

A No, but I think he is a vice president of Sanders.

Q Is he a lawyer?

A I don't know. I believe he is the comptroller.

Q As best you can, can you give me the content of each conversation or communication you had with Mr. Chisom, and again as best you can, about when each such conversation and communication occurred?

A I only recall one conversation with Mr. Chisom -- I was at home when he called -- and I think it had something to do with discussing with me Sanders' attitude toward the breaking of the royalty rate from 5% to 4% if a label was to be used.

Q Would you tell me what Mr. Chisom said to you about Sanders' attitude?

A I don't recall it clearly, Mr. Goldenberg. It seems to me, however, that he reiterated the general comments that had been made in that regard by Mr. Etlinger.

Q Will you tell me those comments as he reiterated them to you?

A I don't recall them specifically.

Q Well, did he indicate that Sanders was against it?

A I believe that he indicated that if the label

was to be used in concert with a sublicensing agreement, he endorsed Mr. Etlinger's views that Sanders should receive additional compensation from the sublicensing income besides their 50-50 split.

Q What was the additional compensation that Sanders should receive?

A Well, their view, Mr. Goldenberg, was that if the option to put on a label were exercised by a sub-licensee that 1%, when the royalties slid from 5% to 4%, would be a benefit to Magnavox, and that they should properly receive 50% of royalty income based on a 5% royalty rate, because the 1% benefit would have accrued to Magnavox.

Q What did you say to him about the Magnavox position in the matter?

A I don't recall my specific comments, but I think I explained to him that the benefit from a prospective label would cut both ways, that being to Magnavox and Sanders, in that it would help sell more Odyssey games and produce additional licensing revenue for Sanders from Magnavox.

Q Did Mr. Chisom change his position on behalf of Sanders after hearing your view of the matter?

A I don't recall that he did.

Q So the Sanders position, at least at the end of that telephone conversation, remained the same as you have stated it earlier?

A Yes.

Q Did they ever change their position?

MR. ANDERSON: If he knows.

BY MR. GOLDENBERG:

Q If you know.

A I don't recall that they did.

Q Did you communicate this conversation with Mr. Chisom to anyone in the Magnavox Company?

A I'm not certain, but I think I probably communicated it to Mr. Rozel.

Q Would it be a correct understanding that this conversation with Mr. Chisom occurred before the 4% label option was withdrawn?

A Yes, I think so.

Q Who in the Magnavox organization authorized the proposal of a royalty at 7%, as referred to in Exhibit 8?

A I don't recall. I think that it was probably discussed with Mr. Rozel. It also could have been discussed with Mr. diScipio.

Q And one or the other of those gentlemen or

somebody else, perhaps, agreed that a proposal of that royalty rate could be made, or should be made?

A I think so.

Q When the running royalty rate was reduced to 6%, did you discuss that with anybody in the Magnavox organization?

A I think I probably did, Mr. Goldenberg. I don't recall with whom it was discussed.

T5

There is another Magnavox management employee who was involved and had responsibilities in this area. His name is Mr. Shurette, S-h-u-r-e-t-t-e. Mr. Shurette reported to Mr. diScipio and had management responsibilities, I think, during that point in time for television type games.

Q You might have discussed it with him?

A I might have discussed it with Mr. Shurette.

Q But you are not sure of that?

A I'm not sure.

Q How about when it was reduced from 6% to 5%?

A I would think that this probably was discussed with Mr. Shurette and/or Mr. Rozel.

Q But you have no clear recollection that that's the case?

A No, I don't.

Q Is Mr. Shurette still with Magnavox?

A No, he isn't.

Q Do you know where he is, either his new office address or residence address?

A No, I don't.

Q Is he still in the Fort Wayne area?

A No. He is in New York with a relatively large company, a larger company than Magnavox.

Q In New York City?

A New York City.

Q Well, did you have authority to change the running royalty rates yourself in the process of these negotiations that you were conducting?

A Yes, I had authority to negotiate it.

Q That gave you authority to change royalty rates?

A Yes.

Q Who made the decision to withdraw the 4% label option?

A I think I made the decision.

Q Has Magnavox entered into any sublicensing agreements under the United States Sanders patents? Do you understand what I mean by the "Sanders patents"?

A Yes.

Q Would you identify the company with whom the agreement has been signed?

A The agreement that -- the sublicensing agreement, for which you have a copy, between the Magnavox Company and Sanders.

Q And there you have reference to that letter agreement which was marked this morning as an exhibit?

MR. ANDERSON: I think it's Exhibit 3.

BY MR. GOLDENBERG:

Q Exhibit 3?

A Yes.

Q There are no others?

A There are no others -- no other sublicensing agreement concerning the U. S. patents.

Q There are various foreign counterparts of one or more of the United States Sanders patents, are there not?

A Yes.

Q There are also applications for counterpart patents still pending in other countries?

A I believe there are some applications still pending.

Q Has Magnavox entered into any license agreements for any of the counterpart foreign patents or applications

with any company?

A Yes.

Q Could you identify each such company and the country involved?

MR. ANDERSON: I will object on the ground that this line of interrogation is irrelevant to the issues in this lawsuit.

I will permit the witness to answer this question.

MR. GOLDENBERG: Mr. Anderson, I will tell you right now I am interested in the answer to the specific question, but I will ask you informally or formally by a Rule 34 request, if I have to, to be permitted to inspect and make copies of the license agreements and the correspondence with respect to them, because I think they are most relevant.

MR. ANDERSON: Well, I disagree. We will be happy to take your request under advisement informally or, of course, respect a formal request.

I think the terms and conditions of any foreign licenses are based on totally different considerations of foreign patents, foreign patent laws, foreign contract laws, and have no relevance

with respect to any issue in this litigation.

MR. GOLDENBERG: The issues raised in this litigation include -- I know you talk about a Hornbook type of pleading -- an antitrust claim, and this raises questions of commerce, international commerce involved.

I know, for instance, my own client, Seeburg, is in the business of exporting games to foreign countries and, therefore, the terms and conditions under which it could do so if licenses of any kind had been granted in one or more foreign countries would seem to me to become pertinent and relevant, and I think we are entitled to see those things.

The license agreement itself between Magnavox and Sanders is concerned with foreign patent licenses and who shall have the right to grant them and under what circumstances, so I think those things are relevant. And, of course, the test is not only relevancy, but is it reasonably calculated—

MR. ANDERSON: Reasonably calculated to lead to admissible evidence.

MR. GOLDENBERG: Right. That is one of the tests.

MR. ANDERSON: Or relevant evidence.

MR. GOLDENBERG: So I would make an informal request to see the agreements, to see the negotiating communications between the parties, and I will keep it as an informal request, if you will let me have your position soon on it, because you appreciate my problem. If you come back with a negative, then I must resort to, I believe, to a Rule 34 request, and that would introduce a delay of 30 days.

MR. ANDERSON: I will adivse you within a few days of our position.

I will only comment further that "antitrust" is not some big, all-encompassing allegation that drops all doors. Your pleading does not, as I understand it, contemplate the kind of discovery suggested. But let me consider it. If you have any other points, give them to me informally, and we will advise you in a matter of a few days.

MR. GOLDENBERG: I certainly agree that using the word "antitrust" does not drop all doors. I am talking about something very specific here, and you have our request.

I believe that you indicated that you would permit the witness to answer to the extent that he

could presently recall the question that I put to him about identifying the companies and the countries involved.

MR. ANDERSON: Yes, I will.

BY MR. GOLDENBERG:

Q Would you do that, Mr. Briody?

THE WITNESS: Would you repeat the question, please?

BY MR. GOLDENBERG:

Q It's pretty far back. Let me restate it.

Mr. Briody, could you identify in each country, each company to whom Magnavox has given a sublicense under a foreign counterpart of a patent or application of Sanders Associates?

A In England, Magnavox has granted two sublicense agreements. One is to a comoany by the name of Bluenewt, Limited. This company is also known as "The Sales Team."

Q Is that an official name, or what? Would you explain?

A I believe they go by both names.

Q But their official corporate name, however these things are recorded in England -- I think with the Board of Trade or something like that -- is Bluenewt --

A Bluenewt, Limited.

Q -- Limited. Where is that located?

A In London.

Q London. Is that a non-exclusive license?

A That is a non-exclusive license.

Q If I were to show you a list of the British patents involved, and I believe this to be such a list, could you indicate what patents are licensed to that company?

A I don't know how current your list would be, Mr. Goldenberg.

Q Well, this was obtained from files made available to me, being correspondence between Magnavox and Mr. Riddell on behalf of Atari, and as I look under England here it would seem that it only lists patents.

If you do not recall --

A I could not particularize what the patents are that are licensed to Bluenewt. I would say that the non-exclusive license only includes British patents.

Q Only for British patents. Is it something less than that list of British patents that I just showed you?

A I don't know.

Q All right, sir. What is the other company in England?

A The other company is Redbourn Plastics,

R-e-d-b-o-u-r-n, Plastics.

Q Where are they located?

A I don't know. They are not in London, I don't believe.

Q Is that a non-exclusive license, also?

A Yes.

Q Do you know whether or not it's for this complete list of British patents as I have it here, or something less than that?

A I don't know. I'm reasonably sure that it includes the same British patents that are listed to Bluenewt.

Q Are those royalty-bearing licenses?

A Yes.

Q Could you tell me what the royalty is?

MR. ANDERSON: I object. I think that that's an area where we are getting into the laws, values of patents, patent laws, patent protection that's present in some other country. It's irrelevant to any issue in this litigation.

My client wants to speak to me. Is that all right?

MR. GOLDENBERG: Surely.

(Discussion off the record.)

MR. GOLDENBERG: I have your position and you had mine earlier. Do you instruct the witness not to answer that question?

MR. ANDERSON: No. I will let him answer it subject to the objection, if he knows.

BY MR. GOLDENBERG:

Q Could you answer it, if you know?

A The royalties of both of these agreements are the same. They are 5½% of the net selling price of the licensed games for the first 100,000 games. After that, the royalty slides downwardly to 4½% of the net selling price.

Q Are the games involved like the Odyssey game? I mean by that, are they a package of appropriate electronics to be attached to a television receiver?

A They are similar. The games are similar to Odyssey in that they are home or consumer electronics type games.

Q Perhaps this is a good time to get into this. And therefore, they are different from coin-operated amusement games such as have been made by the Williams Electronics Company, a defendant in this case, is that correct?

A Yes, I believe that they are.

Q Are the licenses restricted to the home-operated kind of game as distinguished from the coin-operated amusement game?

A Yes.

Q Are there any other restrictions in the license agreement as to what kind of game or product can be made other than that?

A Well, it's hard for me to interpret your question, Mr. Goldenberg, as to whether or not there are any other restrictions, because --

Q As to the type of game that can be made. I appreciate that every license agreement contains one kind of restriction or limitation or another, but perhaps the question could be answered -- or my question could be answered if you could define the "licensed products" to the extent that you can recall.

A I can only recall that "licensed products" includes in the definition consumer or home type amusement games, and specifically coin or token-operated amusement games.

Q Excludes those. Are there any territorial restrictions as to where they may sell these games?

A I don't think there are. They are licensed under the British patents.

Q And there are no restrictions as to where they may be sold?

A No.

Q Were either of those licenses entered into after a suit had been filed against either one or the other of those companies?

A What do you mean by saying "when a suit was filed"? British law is different than American law.

Q Well, then, I would ask you to help me on that. Was any kind of a legal proceedings under British law initiated by Magnavox or Sanders against either one or both of these companies?

sic

A For Bluenewt, yes.

Q What was the nature of that proceeding?

A Magnavox filed a writ in England against Bluenewt.

Q Would you tell me, to the extent that you know, what filing a writ means, or the consequences of it?

A As I understand it, this involves the assertion of a legal right. However, you have approximately a year in England within which time you can in fact go to court and actively assert that right.

Q Sort of in the nature of a caveat, or putting somebody on notice or something like that?

A Well, I think it's a little more than that in England.

Q Was that writ then dismissed, or whatever you call it, once the license agreement was entered into?

A I believe that it was.

Q Could you give me the next country in which licenses, or a license, has been granted?

A Those are the only two consummated license agreements which are, in effect, sublicense agreements, outside of the United States.

Q Are there other sublicense agreements in negotiation at this time?

A Yes. I assume, Mr. Goldenberg, you mean outside of the United States.

Q Yes, this question is still outside of the United States.

Are there any agreements which have been granted in foreign countries for counterpart patents or applications which are not in the nature of sublicense agreements?

A Relating to what?

Q These patents, the foreign counterparts or applications of the Sanders patents.

A Not to my knowledge.

Q Now, you used that phrase "in the nature of sublicense agreements, and I raised a question in my mind whether there was --

A I merely only intended to correct my previous reference to licensing or the license agreements.

Q So there are no other sublicense agreements outstanding at this time with respect to these foreign counterparts, although there are some in negotiation, is this a correct understanding?

A Yes, yes.

Q Is there any litigation pending in foreign countries with respect to the counterpart patents or applications?

A Yes.

Q Could you identify each instance of litigation, where it's pending and who the defendant is?

A I don't have all this information at my fingertips, Mr. Goldenberg, but there are several lawsuits that are pending in England. There has been a writ served against a company in Holland. I think that's it.

Q All right. If we want to know in greater detail, we will attempt to find out in some other fashion.

Mr. Briody, whatever licensing or sublicensing activity that has taken place with respect to the foreign

counterparts of the patents and applications of Sanders, that has been an activity conducted by Magnavox, is that a correct understanding?

A Yes, outside the United States.

Q Sanders Associates has not participated in that activity in any way?

A Do you mean that question with respect to negotiating or the consummating of sublicense agreements?

Q Well, in any way, either way. Has it participated in the negotiations?

A Not really.

Q Well, give me the extent of their participation, however little it might have been.

A Mr. Etlinger made a trip several months ago to Holland and met with his Dutch patent agent. And during this trip I believe that he discussed the infringement or prospective infringement of Dutch patents by a Dutch company.

Q How do you know this?

A The Dutch patents haven't issued yet, and I have also visited the same Dutch company.

Q Well, how do you know Mr. Etlinger visited them and discussed it with them?

A Because he told me.

Q Mr. Etlinger told you?

A Mr. Etlinger told me.

Q What did he tell you?

A He told me that he visited his Dutch patent agent.

Q Did he tell you what he discussed with the Dutch patent agent?

A No.

Q But he did talk about the Dutch counterpart patents and applications -- or I gather they are all applications?

A Yes, Mr. Goldenberg. The Dutch patents have not issued as yet, and Mr. Etlinger is exerting his best efforts by communicating with his Dutch patent agent to see that they issue as soon as possible.

Q Did he discuss an actual or potential infringement situation with this Dutch agent?

MR. ANDERSON: Well, I object. It's obviously hearsay.

MR. GOLDENBERG: Well, it seems to me that Mr. Briody invited it by telling me how he heard about the visit, and some portion of what was discussed, and I appreciate it's hearsay, but I would like to know what Mr. Etlinger told him.

BY THE WITNESS:

A I don't recall any of the details.

BY MR. GOLDENBERG:

Q Has there been any other activity in connection with foreign sublicensing situations on the part of Sanders, other than this visit by Mr. Etlinger?

THE WITNESS: Would you repeat that question, please?

MR. GOLDENBERG: Could you read it?

(Question read by the reporter.)

BY THE WITNESS:

A Yes.

BY MR. GOLDENBERG:

Q Could you tell me about that, sir?

A From time to time, Sanders receives what I will refer to as expressions of interest in sublicensing the patents, which they bring to Magnavox's attention.

Q Are these expressions of interest in writing?

A Yes, they usually are in writing.

Q Does he send you copies of them?

A Yes, he usually does. He has also called me on occasion to discuss discussions he has had with others on the same subject.

Q What is the name of the Dutch company?

A Schrader Electronica.

Q Could you spell that, please?

A I believe it's S-c-h-r-a-d-e-r, E-l-e-c-t-r-o-n-i-c-a.

Q Where are they located?

A Amsterdam.

T6

Q Mr. Briody, a number of files were made available to me and I have no desire to put more documents in the record than I have to, but these files had to do with companies with whom Magnavox has broached the question of a sublicense under the Sanders patents, or actually entered into negotiations, and I wouldn't expect you to remember them all, but if I could read a list here and you could tell me if this accords with your understanding, the first one I have is Atari -- and I want to have the proper corporate name, if I can -- Incorporated, in Santa Clara, California, and I would ask you: Has there been correspondence, communications, between Magnavox and representatives of that company?

A Yes.

Q Was a sublicense proposed to them?

A Yes.

Q Do you recall the running royalty rate for that sublicense?

I don't wish to subject you to a memory test. That's not my purpose at all.

For the purpose of refreshing your recollection, I show you that letter.

A I recognize this as being a letter -- or a copy of a letter that I wrote to Baylor Riddell, who was representing Atari, on or about April 9. And in this --

MR. ANDERSON; Of what year?

BY THE WITNESS:

A -- 1973, and in this --

Do you want me to comment on this letter?

BY MR. GOLDENBERG:

Q No, sir, I don't. I simply offered it to you to see if it would refresh your recollection with respect to the running royalty rate offered to that company, or proposed to that company.

A As I recall it, this letter was an updating of Atari's lawyer, Mr. Riddell, indicating a general willingness on the part of Magnavox to grant non-exclusive licenses at 5% as a running royalty.

Q Could you tell me what patents or patent applications were to be licensed at that running royalty rate?

A I don't think that was seriously considered at

the time that this letter was written. I note at the top of the letter, Mr. Goldenberg, that it refers to three specific patents.

Q Does that refresh your recollection as to what patents or applications were to be included?

A I don't recall that when I wrote this letter I gave any specific consideration as to what patents were to be included.

Q But the running royalty rate was to be 5%, regardless?

A That the running royalty was to be 5% for a license, if they would like to obtain a license.

Q Regardless of what patents were involved?

A I said I didn't give any consideration to that matter when I wrote the letter.

MR. GOLDENBERG: All right, sir.

I think, since the testimony about the letter has been, perhaps, more specific than I intended, I would mark it as Seeburg Briody Deposition Exhibit No. 11.

(Said document was marked Seeburg Briody Deposition Exhibit 11 for identification, 6/4/75, J.D.)

MR. WELSH: Excuse me. You may want the record

to show that I am leaving.

MR. ANDERSON: All right, let the record so show.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 12 a copy of an unexecuted license agreement between Magnavox and Seeburg Industries, and including 15 pages and an Exhibit B.

(Said document was marked Seeburg Briody Deposition Exhibit 12 for identification, 6/4/75, J.D.)

MR. ANDERSON: There is no Exhibit A?

MR. GOLDENBERG: There is an Exhibit A referred to in the body of the agreement, but the Exhibit A is the Sanders-Magnavox agreement of January 27, 1962.

MR. ANDERSON: Fine.

BY MR. GOLDENBERG:

Q Mr. Briody, I hand you Exhibit 12 and I ask you if you have ever seen it or a copy of it?

A This appears to be a copy of such an agreement that I sent to Seeburg.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 13 a copy of a letter from Mr. Briody to Mr. Don Wallach of Seeburg, dated February 7, 1974.

MR. GOLDENBERG: That letter was copied from one in our file.

MR. ANDERSON: This is a copy that was received by your office?

MR. GOLDENBERG: Correct, sir.

MR. ANDERSON: I might just ask, for the record, with respect to Briody Deposition Exhibit 12, the proposed agreement, was that from documents that we provided or from your files?

MR. GOLDENBERG: From our files.

THE WITNESS: Did you have a question?

BY MR. GOLDENBERG:

Q Do you recall writing that letter, sir?

A Yes.

Q Is the proposed agreement, Exhibit 12, the agreement that was included with that letter?

A I believe it was, Mr. Goldenberg, with the exception that there was an Exhibit A attached.

Q That's my recollection, too, sir.

Now, the running royalty rate provided for in the proposed agreement, Deposition Exhibit 12, was 5% of the net selling price, is that correct?

A Yes, that is correct, with the exception of Article 16, which refers to the option of using a label,

and if this is done, as I recall, the royalty of licensed products, after execution of the agreement, would be reduced from 5% to 4%.

Q And as of that date, February 7, 1974, that license agreement, Exhibit 12, represented Magnavox's proposal to Seeburg?

A Yes, Mr. Goldenberg, with one exception.

Q Yes, sir?

A I would like to add that, of necessity, this would be an incomplete proposal, because Article III on page 2 -- excuse me -- Article III on page 4 of the proposed license agreement refers to a consideration for release based upon past infringement, and it is a blank.

Q So that blank would remain to be filled in if the parties were to have reached an agreement?

A Yes, sir. It also would of necessity need to be accepted by Magnavox as being a reasonable number, according to their best judgment, before Magnavox would have executed such an agreement.

Q But with the number provided by Seeburg and accepted by Magnavox, there would have been an agreement, would there not?

MR. ANDERSON: Well, I object. You mean if Seeburg had -- I think maybe it's just the wording

of your question.

MR. GOLDENBERG: Perhaps it's the wording of my question.

MR. ANDERSON: You said if the number had been provided by Seeburg.

MR. GOLDENBERG: By Seeburg, and the reasonableness of that number, to use Mr. Briody's language, accepted by Magnavox, there would have been an agreement?

BY THE WITNESS:

A The answer to that question would involve speculation on my part, Mr. Goldenberg.

BY MR. GOLDENBERG:

Q Well, what other thing would have stood in the way of an agreement between the parties?

A I can foresee that if Seeburg had totally accepted the terms of that agreement, which they did not, and wrote in an amount of consideration for past infringement which they were willing to pay, that as corporate patent counsel I would then have sought final approval from my clients, the consumer electronics group of the Magnavox Company, before it would have been executed on behalf of Magnavox, just as you, Mr. Goldenberg, would have consulted with your client Seeburg.

Q I understand that, sir, but my question was: Apart from providing the information sought about past infringement, as you have termed it, and filling in the blanks where that information belongs, what would have prevented it from being accepted?

MR. ANDERSON: Well, I object. I think the question has been asked and answered.

MR. GOLDENBERG: No, sir, I don't believe it has. I think --

MR. ANDERSON: And the witness said that Seeburg never accepted or provided the number. There were two specific things.

MR. GOLDENBERG: I understand that, sir. We understand that Seeburg did not accept it, but if Seeburg had accepted it and had provided information about past infringements so that the blanks could be filled in, and Magnavox found those numbers reasonable --

MR. ANDERSON: Well, I object. The question is obviously speculative.

MR. GOLDENBERG: No, sir, I don't believe it is--

MR. ANDERSON: Purely conjecture.

MR. GOLDENBERG: -- because the implication of Mr. Briody's answer is that there were other things

to be considered, or that signing the agreement, filling in the numbers, wouldn't have resulted in an agreement between the parties, all to the purpose of having this appear to be something less than an offer to license.

We have fallen into the use of the word "proposal." I am simply trying to inquire as to what other considerations could have been involved at that stage of the proceedings, and I well appreciate that in the normal course of things, had those things been done, it would have been presented to Magnavox management for execution.

BY MR. GOLDENBERG:

Q I would assume, sir, that you do not have authority to execute agreements on behalf of the Magnavox Company?

A That is incorrect.

Q You do have authority?

A I do have authority.

Q Could you have executed an agreement such as Exhibit 12?

MR. ANDERSON: Well, I object. Do you mean did he have the technical authority to bind the company, or by "could" do you mean physically the

ability?

MR. GOLDENBERG: The technical authority to bind the company.

BY THE WITNESS:

A I have the technical authority, Mr. Goldenberg, to bind the company. However, it is my general practice not to bind the company unless I receive a final sign-off on a negotiated agreement from my client.

BY MR. GOLDENBERG:

Q Well, you had authority, I take it, to make the proposal set forth in the letter of February 7, Exhibit 13, and the license agreement, Exhibit 12?

A Yes.

Q And if you had chosen to do so -- your practice would not permit you to do it -- you could have signed that agreement on behalf of the Magnavox Company technically, legally, and it would have been binding upon the company?

A Yes.

Q Now, can you tell me whether or not in the weeks before and after a period around February 7, 1974, whether an agreement or agreements the same as or substantially similar to Exhibit 12 were offered to companies other than Seeburg, or proposed?

A I recall that agreements like this were proposed to other companies, some other companies.

Q Could you identify those other companies?

A I don't have the answer to that question at my fingertips, Mr. Goldenberg, but I think you might have some documents that might help me.

MR. GOLDENBERG: I have some documents.

Mr. Anderson, my object here is simply to avoid unnecessarily burdening the record with similar documents, so with your leave what I would do is to show Mr. Briody such same or similar agreements where I have them and ask if that does not refresh his recollection with respect to the question I have outstanding.

If you would prefer, I can mark them.

MR. ANDERSON: My only problem would be minor differences that could only be detected from later careful inspection, and the only way we can do that is to have them marked. I suspect we better have them marked, if you don't mind.

MR. GOLDENBERG: Okay.

MR. ANDERSON: It probably won't take any longer.

MR. GOLDENBERG: All right.

I ask the reporter to mark as Seeburg

Briody Deposition Exhibit 14 a proposed agreement between the Magnavox Company and Allied Liesure Industries.

(Said document was marked Seeburg Briody Deposition Exhibit 14 for identification, 6/4/75, J.D.)

MR. ANDERSON: I think the documents will speak for themselves. The witness probably doesn't have to take the time to compare them, unless you want him to at this time.

MR. GOLDENBERG: I would like the witness to say, if he can, spending a minimum amount of time, if Allied Liesure, for instance, was offered or had a proposal of the same or substantially the same license agreement as that which has been marked.

THE WITNESS: Mr. Goldenberg, from our files, you may have found some prospective or proposed type of license agreements that might never have been sent to prospective licensees just because they were in the file and something else was done. I believe you might have a cover letter that would identify to me that this particular agreement might have been sent, or proposed agreement, might have been sent to Allied Liesure.

MR. GOLDENBERG: I will look for, and I will have to say that I did not in all instances take such cover letters -- I believe there might be one -- Mr. Williams, can you help me? -- to Mr. Gerstman, dated February 14, 1974.

MR. ANDERSON: There is a letter.

MR. GOLDENBERG: It transmits a license agreement.

MR. ANDERSON: Would you like to borrow our copy?

MR. GOLDENBERG: May I?

MR. ANDERSON: Certainly.

MR. GOLDENBERG: May I show this to Mr. Briody?

MR. ANDERSON: Certainly.

BY THE WITNESS:

A In view of this letter of February 14, a copy of which has been shown to me, it seems to me that I sent an agreement such as Seeburg Briody Deposition Exhibit 14 to Mr. Gerstman, who at that time was representing Allied Liesure Industries, on or about February 14, 1974.

BY MR. GOLDENBERG:

Q Mr. Briody, do you recall whether an agreement similar to or substantially the same as Exhibits 12 and 14 were offered to Bally?

A I believe that a proposed agreement similar to

that was offered to Bally, Mr. Goldenberg, but I am not absolutely sure, and I think that maybe you have a cover letter that identifies that.

MR. GOLDENBERG: It's very possible I do, sir.

I would like the reporter to mark as Seeburg Briody Deposition Exhibit 15 a license agreement, proposed license agreement, between Magnavox and Bally Manufacturing Company, and as Exhibit 16 a letter from Mr. Briody to Mr. Tomlinson of Bally Manufacturing, dated February 22, 1974.

(Said documents were marked Seeburg Briody Deposition Exhibits 15 and 16 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, you now have Exhibits 15 and 16 in front of you. Does that refresh your recollection as to whether an agreement such as we have been discussing was offered to Bally Manufacturing?

A Yes.

Q And what is the fact? Was such an agreement offered?

MR. ANDERSON: Object only to the term "offer."

MR. GOLDENBERG: Proposed.

BY THE WITNESS:

A Yes, Mr. Goldenberg, I recall having written the letter on or about February 22, 1974, to Mr. Tomlinson, after meeting with him in his office, sending him a proposed license agreement between -- non-exclusive sub-licensing agreement between Bally and Magnavox.

Q And that proposed agreement is Exhibit 15?

A Yes. This proposed agreement appears to be a copy of it.

Q I note, sir, that Article I, paragraph 1.01(b), "Licensed Patents," includes seven patents and two United States patent applications, is that correct?

A Yes, that is correct.

Q Was it your belief that Bally Manufacturing was infringing all of those patents?

MR. ANDERSON: I object. I think that's a legal conclusion and an improper question.

MR. GOLDENBERG: I don't think the objection is good, but I don't want to take time, and maybe I can put some other questions to get the information I am seeking in another way.

BY MR. GOLDENBERG:

Q Why did you include that number of patents or patent applications in that proposal to Bally Manufacturing?

A You want me to answer the question, Mr. Goldenberg?

Q Yes, I do.

A As I recall, the reason why I included these patents was as a matter of convenience, since at the time these were all of the patents that Magnavox was exclusively licensed -- U. S. patents, that is -- by Sanders Associates.

Q For whose convenience?

A For Magnavox's convenience.

Q Now, I note in the letter accompanying the transmission of that proposed agreement only three patents are listed under the subject, with an indication that there's apparently only an infringement of those three patents, is that correct?

A Well, Mr. Goldenberg, as I recall, this reference at the beginning of the letter of February 22, 1974 to Mr. Tomlinson of Bally from myself would be the reference that we had in our file for those three patents, which I assume were previously brought to the specific attention of Bally Manufacturing Corporation.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 17 a copy of a letter from Mr. Briody to Mr. Donald Welsh, dated

April 3, 1974.

(Said document was marked Seeburg Briody Deposition Exhibit 17 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Can you identify that as being a copy of the letter you wrote on that date, sir?

A Yes.

Q I note the heading on that letter is different from the heading on the letter Exhibit 16; would you agree?

A Yes. The subject, that is.

Q The subject. And Exhibit 17 refers to four patents, now, doesn't it?

A Yes.

Q So the answer you gave previously about the significance of the three patents on Exhibit 16, of it being a file heading, does that still apply?

A I don't recall what applied at the time that I wrote this letter on or about April 3, 1974. I do recall, however, having become aware of the 3,778,058 patent, and I believe on or before that time the 3,778,048 patent --

MR. ANDERSON: You mean -058?

BY THE WITNESS:

A -- excuse me -- the -058 patent was discussed

with you, Mr. Goldenberg.

BY MR. GOLDENBERG:

Q It may have been, sir. I'm not too sure I attach any particular significance to that.

But then the heading on the letter has more meaning than just reference to a file heading, doesn't it?

A Well, usually when I write a letter to a prospective licensee or an infringer, I follow the file heading. My secretary, as a general rule, prepares the letter based on the file heading.

On occasion, I might add something to the subject if I think it has relevance to the specific letter.

Q What would be your recollection in this instance? Did you add something to the file heading?

A I recall having discussed the -058 patent with you in your capacity of representing Seeburg and Williams Electronics, and therefore having decided that it would be pertinent to include it in the heading of this letter.

Q What was the basis of that decision? I don't represent Bally. It may have come up in some talk that we had. I don't recall. That name may have come up. Why would the additional patent have been added to the letter to Mr. Welsh?

A As I recall, it would probably have been because

I thought at the time I wrote that letter that that particular patent, the -058 patent, would have been of interest also to Bally.

Q All right, sir. Then isn't the situation that on February 22, according to Exhibit 16, you thought three patents would be of interest to Bally; on April 3, you thought four patents would be of interest to Bally; and that's why they are included in the heading?

A Would be or might have been of interest to Bally.

Q All right. Then why did the license offer include seven patents and two applications -- or the proposal?

A I believe I previously answered that question, Mr. Goldenberg. Those are all of the patents under which Magnavox is exclusively licensed in the United States by Sanders Associates.

Q And you included them even though you had no belief at the time that you did it that they -- the ones that do not correspond to those listed in the subject headings of Exhibits 16 and 17 were of any interest to Bally?

THE WITNESS: Would you repeat that question please?

MR. GOLDENBERG: Read it.

(Question read by the reporter.)

MR.ANDERSON: That's actually a statement, rather than a question.

MR. GOLDENBERG: That is a statement, rather than a question.

Would you agree with that, sir?

BY THE WITNESS:

A I find the question too vague to respond to, Mr. Goldenberg.

BY MR. GOLDENBERG:

Q What do I have to do to make it more specific, sir? Tell me, what don't you understand about the question?

A I don't understand the objective of the question.

Q Well, I can perhaps appreciate your problem there. The objective is to elicit an answer from you, whatever it may be, and I think that's your duty here as a witness, to give me your best answer, and that's all I have a right to expect.

But let me try again, if I may.

In Exhibit 16, three patents were listed in the subject, because you had concluded, or had reason to believe or suspect, that they would be of some interest to Bally Manufacturing, is that correct?

A That is correct.

T7 Q In Exhibit 17, that list was expanded to four patents?

A I wouldn't say the list was expanded. I would

sic say the subject heading of a letter was changed to add another patent.

Q I will accept those words. And it was changed because you had some reason to believe that the added patent would be of some interest to Bally Manufacturing?

A Yes.

Q Then I would ask you why did the offered license agreement include patents and applications which were not in the listing of either Exhibit 16 or Exhibit 17?

MR. ANDERSON: I object. You have asked the same question twice, and he has answered it twice. This is the third time.

MR. GOLDENBERG: I'm sorry. I thought he said he didn't understand my question.

MR ANDERSON: Not that question. That question, he answered on two different occasions, I think, that that was the --

BY THE WITNESS:

A I thought I said, Mr. Goldenberg, that it was convenience, why we had originally proposed the group of patents, and it also was all of the patents under which

Magnavox was exclusively licensed by Sanders Associates in the United States.

BY MR. GOLDENBERG:

Q So for Magnavox's convenience, seven patents and two applications were offered or proposed to be licensed to Bally Manufacturing, even though you believed only that, at the most, four of those were of interest to that company, is that not correct?

MR. ANDERSON: I object. That's a mischaracterization of the testimony, if that's what it's supposed to be.

MR. GOLDENBERG: The witness can disagree with me.

BY THE WITNESS:

A I don't think I was in a position to make that judgment. Bally had never responded to Magnavox in terms of what patents they were interested in licensing.

MR. GOLDENBERG: Well, I propose to let the matter drop here. The documents speak for themselves, and I have your answers, such as they are.

I ask the reporter to mark as Seeburg Briody Deposition Exhibit 18 a copy of a letter from Mr. Briody to Mr. Threedy, dated February 22, 1974.

(Said document was marked Seeburg Briody Deposition Exhibit 18 for identification, 6/4/75, J.D.)

MR. GOLDENBERG: I also ask the reporter to mark as Seeburg Briody Deposition Exhibit 19 a copy of a proposed agreement between the Magnavox Company and Chicago Dynamic Industries.

(Said document was marked Seeburg Briody Deposition Exhibit 19 for identification, 6/4/75, J.D.)

MR. GOLDENBERG: Mr. Anderson, I note that Exhibit 19 does not have Exhibits A and B, Exhibit A being the Sanders-Magnavox agreement of January, 1972, and Exhibit B being that proposed label.

MR. ANDERSON: Yes, that's true.

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibits 18 and 19, and I ask you if by looking at those exhibits your recollection is refreshed as to whether or not a license agreement the same as or substantially the same as that proposed in Exhibit 12 was proposed to Chicago Dynamic Company -- is that the name --

MR. THREEDY: Industries.

BY MR. GOLDENBERG:

Q -- Industries?

A Yes, this letter of the 22nd to Mr. Threedy, signed by myself, indicates that a similar agreement was forwarded to him on or about that time.

Q Would you agree with me that the patents offered to be licensed in that agreement consists of the same seven United States patents and two United States patent applications that have been the subject of the other proposed agreements?

MR. ANDERSON: I think the document speaks for itself.

BY THE WITNESS:

A They each -- Seeburg Briody Deposition Exhibit 12 and Seeburg Briody Deposition Exhibit 19 both include seven U. S. patents and two patent applications.

BY MR. GOLDENBERG:

Q All right, sir. What was the reason for proposing to Chicago Dynamic Industries, Inc. that they take a license under those seven patents and the applications?

A I think the reason is the same as that I already stated, Mr. Goldenberg.

Q That is, for your convenience, for the

convenience of Magnavox, is that correct?

A Yes.

Q Do you have any recollection that you had come to any view as to what patents Chicago Dynamic Industries should be interested in, in the same fashion that you had come to a view with respect to the Bally Manufacturing?

A I don't recall having come to any specific conclusion. However --

Q Did you -- I'm sorry.

A However, I think that when I wrote this letter that the patents -284, -285 and -480 were considered to be of interest to them from a licensing point of view.

Q Considered by whom, sir?

A Considered by me.

Q The other patents and applications in the proposed license agreement, however, were not considered by you to be of interest, is that correct?

A I couldn't answer the question that way. If you will permit me to state it in my words, I don't think the other patents and patent applications besides -284, -285 and -480 had been considered by me.

Q To your knowledge, has Magnavox or you on behalf of Magnavox or anybody else ever charged Chicago Dynamic Industries with infringement of any patents other

than 3,659,284; 3,659,285; and 3,728,480?

MR. ANDERSON: Well, I object to the question as misleading and without foundation. There has been no testimony to establish a foundation for that question.

Furthermore, there is a lawsuit pending in which this deposition is being taken, in which infringement is charged of two patents.

MR. GOLDENBERG: So that takes care of two of the patents, doesn't it, and perhaps I could then lay a foundation with respect to the -480 patent to satisfy your objection?

MR. ANDERSON: Yes.

BY MR. GOLDENBERG:

Q Has Magnavox, you or anybody else on behalf of Magnavox, ever charged Chicago Dynamic Industries with infringement of U. S. patent 3,728,480?

A I don't know offhand, Mr. Goldenberg. Perhaps you would like to refresh my memory.

MR. GOLDENBERG: I would ask the reporter to mark as Seeburg Briody Deposition Exhibit 20 a copy of a letter from Mr. Briody to Chicago Coin Machine Company, dated July 3, 1973.

(Said document was marked Seeburg Briody Deposition Exhibit 20 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, you now have Exhibit 20. Does that refresh your recollection?

A Yes, Mr. Goldenberg, this document reminds me that on or about July 3, Magnavox charged Chicago Coin Machine Company of Diversey Street, Chicago, Illinois, which I assume is a part of Chicago Dynamics, with infringement of the -284, -285 and -480 patents, by means of their TV Ping Pong game.

Q Are you familiar with J.R.W. Electronics, Inc. of Palo Alto, California?

A Yes.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 21 a license agreement bearing the date of March 1, 19 -- bearing the effective date of March 1, 1974, between Magnavox and J.R.W. Electronics, but not executed.

(Said document was marked Seeburg Briody Deposition Exhibit 21 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, could you tell me if Exhibit 21 is a proposed license agreement sent to J.R.W. Electronics, and whether or not that proposed license agreement is the same as or substantially the same as the agreements proposed to other companies such as Seeburg, Bally, Chicago Dynamics and Atari?

A This proposed license agreement has some differences when compared with the other license agreements that we have been discussing.

Q Could you state briefly what the differences are?

A Could I ask you, Mr. Goldenberg, to introduce the cover letter that relates to this agreement, which I assume you have?

A No. You assume too much, sir.

MR. ANDERSON: I think we can provide you with that, if that will help.

MR. GOLDENBERG: Thank you, sir.

THE WITNESS: It might make it clearer from my recollection point of view.

MR. GOLDENBERG: Of course.

MR. ANDERSON: I hand you a copy of a letter dated March 19, 1974.

MR. GOLDENBERG: I have that, but I can't find it. I'm sorry.

May I mark this copy?

MR. ANDERSON: Yes, if you will give us a copy, then.

MR. GOLDENBERG: Surely.

I would ask the reporter to mark as Seeburg Briody Deposition Exhibit 22 a letter from Mr. Briody to Mr. George Kucera, dated March 19, 1974.

(Said document was marked Seeburg Briody Deposition Exhibit 22 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, you now have Exhibit 22, and you indicated that might help you answer the question previously put to you.

Mr. Briody, in terms of what differences there are, the documents will speak for themselves, but it may be that you had one or two significant differences in mind that you wanted to talk about, so --

A As I recall, Mr. Goldenberg, Mr. Kucera called up from California, as representing J.R.W. Electronics, and asked Magnavox to send him a license agreement, sort of like by return mail.

The essential differences between this agreement and the other agreements that we have discussed earlier is that it includes three patents, rather than seven patents and two patent applications, those three patents being -284, -285 and -480.

I also note that this proposal was made on or about March 19, 1974, which was approximately a month after the other proposals.

Q What is the running royalty rate provided for in the agreement proposed to J.R.W.?

A 5% of the net selling price of the licensed products.

Q Do you recall whether agreements such as we have been discussing, and by that I mean agreements typified by Exhibit 12, were proposed to any companies other than those that we have discussed in the past few minutes?

A Not offhand, Mr. Goldenberg.

Q In the various agreements where the 4% label option was provided as a proposal, that proposal was later withdrawn in each case, was it not?

A I believe it was, with one exception. J.R.W., as I recall -- and my memory is somewhat hazy on this -- when they called up and asked for a license agreement,

they were in a hurry to obtain it.

I mentioned to Mr. Kucera over the telephone that we had a label in our other agreements, and he said, well, that seemed fine, that didn't seem in any way to present a problem to him, so the label is written into the prospective J.R.W. agreement without it being an option. He represented to me that, you know, this would be something that they would be quite willing to do, so the label, I believe, is included in the J.R.W. agreement without an option, and that would never have been withdrawn, because it appeared to be, you know, consentual on the part of the representations that Mr. Kucera made to me.

Q Now, the J.R.W. proposed agreement was sent, if I may have the exhibit, Exhibit 22, on March 19, with the 4% label provision as a requirement, not as an option, is that --

A May I see that agreement again, Mr. Goldenberg?

Q Surely, sir.

A As I recall it, and I believe this proposed agreement should speak for itself on the point, the label was accepted as presenting no bother to Mr. Kucera on behalf of his client and was endorsed by him. Therefore, there is no option included in this proposed agreement

for using the label, and the royalty is 5% without any alteration, and the label is written into this agreement as being a contractual item.

Q I see, sir. So there's no reduction of royalty to 4% if the label is used?

A That's correct, as I recall it, that's the way this agreement is written.

Q So that's another difference between it and the other agreements?

A Yes.

Q Now, do you recall a time, perhaps not specifically, but in the negotiations between you and I with respect to -- or discussions, call them what you will -- with respect to a patent license to Seeburg Industries, when I indicated to you that Seeburg was not interested in obtaining a license under the seven patents, applications included, in the proposed agreement, Exhibit 12?

A I recall several conversations that we had on that subject in a general sense.

Q Do you recall any specific statement on my part to that effect?

A Yes, I remember your making that comment and, as I recall it, I indicated to you that I would like to find out what patents you would like to obtain a license

under on behalf of your client, and also indicated to you willingness to provide you with such a license.

Q All right, sir. Did I then, at any time during these discussions, advise you as to what patents we would be interested in discussing a license under?

A Yes.

Q Do you recall what those two patents were?

MR. ANDERSON: I object only in that you referred to two patents. There has been no testimony up until now about two patents.

MR. GOLDENBERG: I apologize.

BY MR. GOLDENBERG:

Q Do you recall how many patents I told you Seeburg would be interested in?

A I remember your finally concluding, after discussions in some degree of depth concerning the relevance of the -480 patent to your client Seeburg and/or Williams Electronics Products, that you indicated to us that you felt that you had reached the conclusion that they would like -- your client would like to obtain a license under the -284 and -285 patents.

Q That accords with my recollection, sir.

Do you recall a response to this statement on my part on behalf of Seeburg to what you proposed on

behalf of Magnavox as a running royalty rate?

A When you finally concluded that you wanted a license under the -284 and -285 patents, Mr. Goldenberg?

Q Yes, sir.

A I believe that you may have a document that would refresh my memory on that.

MR. GOLDENBERG: I think I do, and I would ask the reporter to mark as Seeburg Briody Deposition Exhibit 23 handwritten notes captioned with my name and the date 5/17/74.

(Said document was marked Seeburg Briody Deposition Exhibit 23 for identification, 6/4/75, J.D.)

BY MR. GOLDENBERG:

Q Mr. Briody, you have Exhibit 23. Are those notes prepared by you?

A Yes, Mr. Goldenberg.

Q Were they prepared by you on the date indicated at the top or about that date?

A I think they were.

Q With that exhibit in front of you, is your recollection refreshed as to what offer -- or proposal you made to Seeburg through me on behalf of Magnavox?

A Yes. As I recall, Mr. Anderson and myself were

present at a meeting with you in your office and a proposal was made for past liability of $4\frac{1}{2}\%$, which I recall to be based on net selling price, for one patent; and 4 and three-quarters of a percent, also based on net selling price, for a license for release under two patents. And the patents of which we were speaking were the -284 and -285 patents.

And I further recall from looking at this document that we proposed a future license at 5% for rights under any one patent, or $5\frac{1}{4}\%$ for two patents, and we were talking about the -284 and -285 patents.

Q That accords with my recollection, also, sir.

A Could I make another comment regarding this document?

Q Surely.

A I would like to also add for the record that it appears from my notes that information was still to be obtained by Mr. Goldenberg concerning the Spanish company which he had previously indicated he would like to include rights for under a prospective agreement, because this document indicates that the Spanish company, Mr. Goldenberg didn't know about yet.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 24

handwritten notes bearing my name and the indicated date of 3/6/74.

(Said document was marked Seeburg Briody Deposition Exhibit 24 for identification, 6/4/75, J.D.)

THE WITNESS: This looks like some handwritten notes that I took at a meeting with you, Mr. Goldenberg, on or about March 6, 1974, copies of those notes.

MR. GOLDENBERG: All right, sir.

I see something has been deleted from this document.

MR. ANDERSON: That's correct, an item 2(b) has been deleted, because we consider it a privileged communication or document, and also I think there was some entry immediately to the left of the heading of the document which shows now as a white area, and I think there was some sort of a note in there that we considered privileged.

MR. GOLDENBERG: Was this document transmitted to Mr. Briody's client?

MR. THREEDY: Are you shaking your head?

THE WITNESS: Are you asking me or him?

MR. GOLDENBERG: I'm asking Mr. Anderson.

MR. ANDERSON: You could probably ask the witness that.

BY MR. GOLDENBERG:

Q Mr. Briody, did you transmit the document identified as Exhibit 24 to your client?

A No.

MR. GOLDENBERG: Could I be told generally what the subject matter of the deletions was?

sic

MR. ANDERSON: We can't tell you now. We would have to find the original document. We could tell you in the morning.

MR. GOLDENBERG: Let me tell you my position on this, Mr. Anderson: I recognize the privilege, but I don't think there is any privilege which attaches with respect to communications or proposed communications where the attorney is functioning as a businessman-negotiator, rather than a lawyer giving advice to a client; and with respect to this document and other documents, deletions have occurred where they are really concerned with business negotiations and licensing, proposed licensing, and recommendations with respect to that.

I don't believe the claim of privilege is appropriate.

MR. ANDERSON: We recognize that that's your position, and I think even conceding that you have a point, a lawyer does wear both hats and does and can perform both functions.

MR. GOLDENBERG: I just invite you to consider that, to address yourselves to these matters.

BY MR. GOLDENBERG:

Q Simply to close for the evening, Mr. Briody -- I'm sorry, perhaps you have answered this -- these are notes taken by you in the course of a meeting with me on that day, or following a meeting with me on that day?

A Yes, Mr. Goldenberg.

Q Do they accurately reflect your recollections of what was worth recording at that meeting?

A I would assume so. I would have to study it to make a present conclusion on the subject. Since I wrote the notes on or about that time, I would assume they accurately reflect my thinking on or about that time.

Q And what you said and what I said, in terms of what was worthy of being recorded, as far as you were concerned?

A Either way, Mr. Goldenberg, or my interpretation of what had been said.

MR. GOLDENBERG: Thank you, sir.

With that, we will adjourn for the day and resume at 9:30.

MR. ANDERSON: All right.

(An adjournment was taken herein until June 5, 1975, at the hour of 9:30, a.m.)